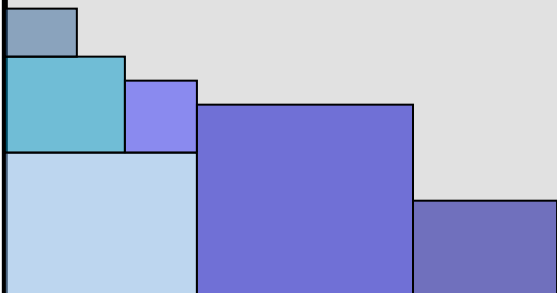


Study on
Communal Land Registration
in Lao PDR

Land Policy Study No. 6 under LLTP II

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- No. 1: Study on Land Allocation to Individual Households in Rural Areas of Lao PDR; December 2004**
Authors: Bouakham Soulivanh, Anothai Chantalasy, Phounsavat Suphida, Florian Lintzmeyer, Florian Rock
- No. 2: Study on Land Markets in Urban and Rural Areas of Lao PDR; March 2005**
Authors: Bouakham Soulivanh, Anothai Chantalasy, Phounsavat Suphida, Florian Lintzmeyer, Florian Rock
- No. 3: Study on Land Tax and Fees Policy in Lao PDR; February 2006**
Authors: Simon Keith, Pheuipanh Ngaosrivathana, Bouakham Soulivanh, Onsy Phimsomphou, Chanh Denuthai
- No. 4: Study on State Land Leases and Concessions in Lao PDR; June 2006**
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List of Acronyms

FLA	Forest Land Allocation (Vietnam)
DAFEO	District Agriculture, Forestry and Extension Office
DARD	Department of Agriculture and Rural Development
DONRE	Department of Natural Resources and Environment
GTZ	German Technical Cooperation
LL	Land Law
LUP/LA	Land Use Planning/Land Allocation
NAFRI	National Forestry and Agriculture Research Institute
NGO	Non-governmental organization
NLMA	National Land Management Agency
NTFP	Non-timber forest product
RDMA	Rural Development in Mountainous Areas

Executive Summary

Rethinking of priorities for land titling projects in the Lao PDR is needed to stop the current trend towards conversion of communal lands to other uses mainly agricultural and tree plantations. Instead of focusing exclusively on the registration of individual land holdings it is important to understand and recognize customary tenure systems that support both communal and individual use of land and natural resources.

Field visits to over twenty villages in five different provinces of the Lao PDR have shown that across all ethnic groups, communities use and manage communal lands. Types of lands often found to be under communal management include upland areas, grazing lands and village use and sacred forests. Communities and use groups have devised local rules for provision, management and appropriation of communal resources.

Land held in common by a community or user group plays a crucial role for the social, economic and cultural well-being of rural communities. The recognition of communal land rights in statutory law is therefore well in line with national goals of poverty reduction and sustainable use of land and natural resources.

On the other hand, formalizing customary tenure systems also involves risks that need to be carefully addressed in appropriate policies and legislation. The language in existing law and regulation does not clearly support the concept of registering communal land property rights. Two options should be considered: 1) extending the definition of the term “organization” found in current legislation to include communities and user groups or 2) make necessary amendments to the Land and Forestry Laws. An open multi-stakeholder policy debate informed by results from pilot activities testing the registration of communal lands should form the basis for the decision.

Valuable lessons for the process of recognizing communal land rights can also be drawn from two neighbouring countries. The governments of the Kingdom of Cambodia and the Socialist Republic of Vietnam have adopted provisions of long-term statutory land use rights of community groups based on customary tenure systems.

A comprehensive policy and legal framework is needed to support the successful implementation of communal land titling in the Lao PDR. But registration of communal lands is not an end in itself. It legally empowers communities to protect and manage their communal resource base. Follow up support systems including monitoring, enforcement of management rules, and incentives need to be in place to ensure equitable and sustainable use of communal lands after registration and titling.

I. Introduction

1.1 Background

For many decades, communal systems of managing land relations were perceived as outdated and inefficient. The rights assigned to individuals within communal land tenure systems were thought to be insufficient to provide necessary tenure security as precondition to intensify agricultural production. Most land reform efforts therefore centred on the formal recognition of exclusive individual land use rights as seemingly the most efficient property arrangement.

Communal land tenure systems, however, have existed and evolved over a long period of time. They are well adapted systems based on customary laws that connect the present generation with past and future generations, and the human with the spiritual world. In the Lao People's Democratic Republic (Lao PDR), communal property rights regimes represent an integral part of the cultural, social, political and economic framework of the majority of communities across all ethnic groups.

In recent years, there has been an apparent change in the attitude towards customary tenure systems (Fitzpatrick 2005). This new orientation is in part due to a shift in the international policy debate from a primary focus on economic development towards the goal of sustainable use and management of land resources. It is increasingly recognized that in order to achieve the latter, rural people need both secure individual rights to their farm lands and secure communal rights to resources upon which whole villages depend.

With regards to land right registration, it has been realized that building on existing customary tenure systems is easier and more appropriate than trying to re-invent the wheel (World Bank 2003). Premature attempts at establishing formalized structures for land under customary tenure have led to unintended distributive effects, high costs of enforcement, wide-spread disputes and decrease in natural resources (Fitzpatrick 2005, Native Title Report 2003). In general, there is a growing appreciation of the role communities and communal tenure systems play in the sustainable use and management, as well as protection of land and natural resources.

The government of the Lao PDR has recognized customary land use rights for example under the Forestry Law and in several forestry-related Decrees, as well as in Ministerial Decree 997 of the Ministry of Finance, which acknowledges individual land use rights based on customary ways. Under the current legal framework, however, there are no clear provisions and procedures for the registration of communal rights on land. The amended Land Law (2003) and the implementation guidelines to the Law (PM Decree 101) only distinguish areas falling under individual land use right and state land units. In the process of land registration, communally held resources are therefore either privatized or registered as state land units. This potentially puts rural communities at risk of losing control over their customary use areas, such as grazing areas, use forest areas, NTFP collection areas etc. to investors applying for state land leases and concessions.

1.2 Objectives

The main purpose of the study is to explore questions related to the formal registration of communal lands. Overall objectives include:

- To identify and categorize land use areas currently under communal tenure
- To assess the need to register and title communal rights to land

- To recommend appropriate legal mechanisms and options for the registration of communal lands

More specific objectives are listed in the terms of reference for the study in **Appendix 1**. Due to the short timeframe and the complexity of the topic, this paper can only provide initial information and a checklist of issues in order to a) initiate and support a policy discussion on the registration of communal lands in the Lao PDR, b) recommend next steps towards communal land registration and c) point towards knowledge gaps and topics for further study.

1.3 Study Team

The study team consisted of six members:

Somthong Boupphachanh is a lecturer at the Faculty of Social Sciences, Department of History at the National University of Laos. She has a Bachelor's degree in History and Geography from the Pedagogical University of Laos, and a Master degree in Rural Development Management from Khon Kaen University in Thailand.

Bounlath Vorachit has a Bachelors Degree in Business Law from the National University of Laos. He is the head of the land registration unit at the Department of Land, previously under the Ministry of Finance, and will continue his important work under the new National Land Management Agency. Bounlath has significantly contributed to the development of implementation manuals on land registration in the Lao PDR. He has trained the Systematic Adjudication Teams on investigation methods and continues to teach the process of land registration to staff of provincial land offices and in upper levels of the Polytechnic School.

Lau Mua has been a lecturer at the Faculty of Forestry at the National University of Laos for nearly twenty three years. He holds a Master degree in Forest Economics from Kasetsart University, Thailand. He was born in a Hmong community in Xiengkhuang province.

Khamla Phanvilay is currently finalizing his PhD at the University of Hawaii at Manoa, with a fellowship from the East West Center. His research focuses on land use and livelihoods changes in two Northern provinces of Laos. Khamla holds a Master degree in Natural Resource Management and Planning from the Asian Institute of Technology, Thailand. He also teaches watershed management and land use planning at the Faculty of Forestry, National University of Laos.

Katrin Seidel holds a Master degree in International Agricultural Science from the Humboldt University Berlin, Germany. She has worked on land rights issues in Southeast Asia since 1999. Katrin lives and works in Cambodia, where she has supported the implementation of communal land rights registration for more than three years. After this assignment, she will return to Cambodia as programme coordinator for the Heinrich-Boell Foundation.

Robert B. Oberndorf is an international legal consultant with nearly fifteen years of law practice experience. He graduated from Case Western Reserve University School of Law (United States) in 1993 with a Juris Doctorate degree, and has been working in the Southeast Asian region on issues related to natural resources, environmental protection and governance reform since 2001. He is currently based in Bangkok, Thailand where he works for the Regional Community Forestry Training Center for Asia and Pacific (RECOFTC).

1.4 Methodology

In addition to literature review and key informant interviews in Vientiane (see **Appendix 2** for list of persons interviewed), the study team conducted almost six weeks of field survey in five provinces in the north, centre and south of the Lao PDR. In order to get a first hand impression on the experiences with forest land allocation to local communities, the team also visited a pilot village in Dak Lak Province, Vietnam and held discussions with the responsible staff at district and province levels (see **Appendix 3** for time schedule).

The results from the fieldwork were first presented to a small peer group and finally discussed in a half-day workshop with representatives from the Lao Government and international organizations. Comments and suggestions from workshop participants have been incorporated into this report.

1.4.1 Theoretical Framework

Property rights theory, common-pool resources theory and the institutional analysis and development framework (Ostrom 1990, Oakerson 1992) formed the theoretical foundation for the study. With regards to the institutional analysis and development framework, the study team particularly looked at the context that determines action-outcome linkages and therefore influences decisions of individual actors and groups regarding the use and management of land and natural resources. The contextual framework is set by the physical and material nature of the resource, attributes of the community and the rules-in-use. Although the time spent in each village was too short to conduct a comprehensive institutional analysis, the study team collected information on a) the village context and attributes of the community or user groups; b) the physical aspects of the village territory or resource system, including boundaries; c) resource appropriation and provision rules; d) governance and decision making, and e) conflict resolution mechanisms (see **Appendix 4** for village checklist).

1.4.2 Fieldwork Methods

Information was gathered, using qualitative and participatory methods from the tool-box of Rapid Rural Appraisal and Participatory Rural Appraisal including semi-structured interviews (SSI), resource mapping and transect walks¹. Table 1 shows the detailed time schedule for the fieldwork in each village.

	Day 1	Day 2
Morning		Resource mapping Transect walk Final interview with Naiban
Afternoon	Arrival in study village Key informant interview with Naiban (village head)	Travel to next village
Evening	SSI with village committee and elder group	

Table 1: Detailed schedule for field work in individual village

1.4.3 Selection of Field Sites

For the field study, the team selected 21 villages in 7 districts and 5 provinces (see **Map 1**) based on the following criteria:

- **Ethnic composition:** Villages were selected to represent a wide range of ethnic groups of the Lao PDR. In addition to the majority of study villages that comprised

¹ These and other fieldwork methods are described in Schoonmaker-Freudenberger (1994).

only one main ethnic group, six villages were selected that are home to a number of different ethnic groups.

- **Village history:** With regards to the history of the village, the study team selected traditional communities with a long common history and villages that were only recently established. This allowed for a comparison of traditional with more modern practices of communal land and natural resources management. Several study villages were also targeted for relocation or village consolidation.
- **Experience with land and forest allocation:** Partly conflicting with the criterion of accessibility (see below), the study team identified eight villages for the field survey where land and forest allocation has not yet taken place. In all other villages land use planning (LUP) and land allocation (LA) has been conducted. In two villages of Luang Namtha province the team was able to study the results of the improved LUP/LA process.
- **Accessibility:** Due to the tight time schedule, all study villages had to be accessible within a maximum of 2-3 hours drive or walk. This prerequisite made it difficult to explore a wide range of experiences with government programs on land and natural resource use and allocation. In all selected province, the majority of the better accessible villages had already undergone land and forest allocation.
- **Local partners:** The team relied on local partners, including government officials and staff of international organizations, for a first introduction to the selected villages, logistical support and translation.
- **Topography and livelihood systems:** Study villages were selected to reflect a wide range of topographic situations and agro-ecological production zones, including rain-fed wet-rice cultivation in lowland and plateau areas and shifting cultivation on rolling hills and on lower and mid-level mountain slopes.



Map 1: Map of field sites and main ethnic groups²

² Since no standard exists for the transliteration of place names from Lao to English language, different spelling versions can be found throughout literature (e.g. Xiengkhouang or Xiengkhuang). The spelling of names of

1.5 Introduction to the Study Villages

Table 2 summarizes main information on the 21 study villages as a first overview. In **Appendix 4**, all villages are moreover described in short village profiles. The village profiles are an attempt to capture the complexity of land and forest related issues that were identified in the study villages.

Province	District	Village	# of HH	Ethnic composition	Year established or age	Territory in ha	Year of LUP/LA
Luang Namtha	Sing	Nongbua	255	mixed	1991	55	none
		Mom	133	Lue	> 100 years	1,004	2005
		Laokhao	56	Akha	1991	505	2000
		Huayhoy	28	Akha	1998	1,210	2005
Phongsaly	May	Houayvangkao	44	Thai Dam	> 400 years	-	none
		Phia	42	Khammu	> 100 years	1,500	(2000)*
		Ompoulou	73	Sungkor	> 50 years	2,320	(1998)*
		Sophoune	77	mixed	> 200 years	-	2002
		Saen In	24	Khammu	1965	1,115	2000
Xiengkhuang	Nonghed	Nong Sam Che	40	Hmong	> 150 years	572	none
	Pek	Phone Kham	38	Phuane	170 years	144	2006
		Khai	64	Phuane	> 200 years	500	none
		Or An	39	Hmong	1961	-	1999
Savannakhet	Phine	Tat Hai	91	Katang	1988	2634	1999
		Tang Alai	63	Katang	100 years	ca. 3,000	none
		Nathong	167	Makong	> 200 years	8,200	1998
		Nonyang	152	mixed	1931	-	none
Bolikhamsay	Pakkading	Thongnamee	515	Hmong	2003	6,000	2003
		Namdua	300	mixed	1966	-	2003
	Thaphabath	Houylerk	112	mixed	1986	1,300	2000
		Somsaard	80	mixed	1957	758	1999

Table 2: Summary of information on study villages

* Year of land use planning and boundary demarcation (no land and forest allocation)

In accordance with the first criterion of field site selection, villages representing a wide range of ethnic groups were chosen for the field survey. The study team visited a total of 17 ethnic groups, representing ethnic groups belonging to all four main language groups in the Lao PDR (see **Table 3**). The village profiles in **Appendix 4** also provide a short background to the individual ethnic group.

provinces, districts and ethnic groups in this study is in accordance with the 2005 Lao population census. With regards to village names, the most common spelling is used.

Language Group Study Villages	Thai-Kadai	Austro-Asiatic	Miao-Yao	Sino-Tibetan
Nongbua	Thai Dam* , Lao			Phounoy , Lolo, Akha, (Lao Pane)**
Mom	Tai Lue			
Laokhao				Akha
Huayhoy				Akha
Houayvangkao	Thai Dam			
Phia		Khammu		
Ompoulou				(Laosoung Khoe)
Sophoune	Thai Dam, Thai Daeng	Khammu		
Saen In		Khammu		
Nong Sam Che			Hmong	
Phone Kham	Phuane			
Khai	Phuane			
Or An			Hmong	
Tat Hai		Katang		
Tang Alai		Katang		
Nathong		Makong		
Nonyang	Phouthay	Katang		
Thongnamee	Thai Dam, Lao	Khammu	Hmong	
Namdua	Lao , (Thai Pao), (Meuy), Phuane,	Khammu		
Houylerk	Lao , Phuane	Khammu		
Somsaard	(Meuy), Lao			

Table 3: Ethnic composition of study villages

* Majority ethnic groups in the village in bold letters

** Ethnic groups in brackets are not among the officially recognized 46 ethnic groups.

1.6 Limitations of the Study

Although the study considers the situation of a variety of ethnic groups, the results presented in this paper are based on a limited number of cases from literature review and the field survey. They can therefore not be regarded as representative for the over 11,000 villages in the Lao PDR.

Topics discussed during the fieldwork included questions related to cultural norms, customs and traditions with regards to the use and management of land and natural resources. Due to the limited timeframe, however, these questions could only be superficially explored and in-depth anthropological studies are needed to better understand the complex tenure systems of the various ethnic groups in the country.

In addition to the comparatively short timeframe that affects scope and depth of the study results, other limitations include biases inherent in the design of the study and selected field methods. This includes seasonal biases, biases in the selection of study villages, language and conceptual difficulties, and preconceptions of the members of the study team.

Finally, the fluid nature of customary rules represents additional difficulties. Since decision-making authorities enjoy a certain degree of discretion in seeking feasible compromises, actual decisions and outcomes of conflict situations may vary and even significantly divert from formulated rules (Holleman 1986).

1.7 Definitions and Terminology

Customary tenure is the mode of holding rights in land that exists through customs and tradition. Customary tenure systems have evolved over centuries and continue to exist in many countries with a large rural population where access, control and use of land are determined through customary law (Foerster and Apel 2004). Customary tenure arrangements are generally characterized by overarching ritual and cosmological relations with traditional lands, community rights of control over the disposal of land, membership based criteria for land access, community-based restrictions on dealings with outsiders and principles of reversion of unused land to community control (Fitzpatrick 2005). Due to the strong emphasis on the control and management responsibilities of the community, customary tenure arrangements are also often called **communal tenure systems**.

Communal land under communal tenure systems is “the land property of a well-defined and demarcated group that uses the land communally according to known and mutually accepted rules. Non-members of the group are often excluded from use or have lesser rights” (GTZ 1998). It is important to note that although the tenure to land is group-based, land use is in the hand of individual families. Communal tenure systems therefore represent a balance between collective and individual rights. Rights to use, rights to exclude, and limited transfer rights (e.g. inheritance) to land and natural resources can be temporarily allocated to individuals in accordance with customary law. However, power of management, full transfer rights and rights of alienation are vested in the community as a whole. The term in Lao language best describing the concept of communal rights to land is ‘*sit suam luam*’.

Collective property or ‘*sit luam mou*’ is recognized in the Constitution of the Lao PDR (2003) and defined in the Property Law (1990) as “property belonging to a collective” that can be “co-operatives and other collective organizations” (Article 2). Although collective and communal property are similar concepts, the understanding of ‘collectives’ (‘*sahakoum*’) and ‘collective organizations’ (‘*ankar khom luam mou*’) relates more to the model of an unincorporated association with rights vested in individuals by virtue of their membership. It does not capture the notion of the ‘community’ as an entity that transcends the members as individuals as it is the case in communal land tenure systems. The question whether the definition of ‘collective property’ as a type of property recognised in the Property Law can be extended to include ‘communal property’ is essentially a political one (see discussion below). In the paper, however, we will differ between ‘communal rights’ (‘*sit suam luam*’) and ‘collective rights’ (‘*sit luam mou*’) to land as two different concepts.

Communal land registration and titling as used in this paper can be understood as the formal recognition of communal rights to land in statutory law. In case of the Lao PDR, the study team perceives the recognition of communal land rights in statutory law as the most feasible approach (see discussion in Chapter 3). Other options to legalize communal land claims include a) their formal recognition in full accordance with customary law, which may entail separate legislation and administration, and b) the allocation of entire geographical areas for an ethnically defined group (which can be found for example in Canada, the United States and several South-American countries). It should be noted, however, that the option to recognize communal claims to land under statutory law will lead to regulations that are not in full compliance with customary practices. Risks and implications of the inevitable gap between customary and statutory law are discussed below.

II. Results from the Field Work

2.1 Communal Tenure Systems

The research team set out to study customary tenure systems among 17 ethnic groups in 21 villages located in five different provinces of the Lao PDR. But what does one look for when studying tenure?

2.1.1 Definition and Concepts

Tenure systems are related to property. However, property is not an object but rather the social relationships that an individual or a group of individuals may possess or exercise (Bromley 1992). Land tenure can thus be described as social relationships or institutions that govern access to and the use of land and natural resource (Maxwell and Wiebe 1999). Depending on how rights are attributed, scholars have classified property rights schemes into four categories including state property, private property, common property, and open access or the absence of any property rights arrangement.

Since the publication of Hardin's essay "Tragedy of the Commons" in the *Science* journal in 1968, there have been a lot of misconceptions about the nature of common property regimes. Hardin claims that the degradation of natural resources is inevitable whenever many individuals use a scarce resource in common. His assumption that productive use can only be realised by centralization or privatization of natural resources still influences the general discussion on property reform. Based on the empirical evidence of well-functioning communal management systems, a more differentiated view on collective tenure arrangements and resource management has emerged in recent years. It is widely acknowledged that common or communal property regimes ensure equitable and sustainable use of resources as long as the tenure system is formally recognised and effectively enforced (Foerster and Apel 2004).

Even in a private property rights situation not all rights to land or natural resources are vested in the individual or group. The State often reserves the right to restrict private rights in the use and management of the resource and certain right attributes always remain in the public domain (Sjaastad and Bromley 1996). It is therefore more appropriate to think of property rights as a bundle of rights over resources that include *rights of access, withdrawal, management, exclusion, and alienation* (Schlager and Ostrom 1992).

2.1.2 Characteristics of Communal Tenure Systems

In the field, we observed similar characteristics of customary tenure systems across all communities and ethnic groups. The traditional systems of resource use and management assure individual access to resources over which the entire user group or community holds collective claim. All communal tenure systems thus have a collective and an individual dimension.

Communities have established claims to particular land areas by different means. Often they have named their village after characteristic features of the landscapes they have used for their subsistence to emphasize their claims to resources. Many village names reveal the founder or founding clan of the settlement or a prominent natural feature. Among animist communities, the relationship to a location or place has an important spiritual dimension (see Box 1) and community members pay respect to village and other nature spirits.

Box 1: The Spirit Forest in Ban Nathong

The spirit or sacred forest forms identity and spiritual foundation of the community in Ban Nathong, a Makong village in Savannakhet province. In accordance with local customs and traditions, the first settlers in Ban Nathong area could not establish an independent village without their own village spirit. As the population of the settlement gradually increased, people in Ban Nathong performed a ceremony and invited the village spirit of Ban Dongsavan, an already established village, to come and live in the spirit forest of Ban Nathong. Since then, Ban Nathong has been considered an independent village and continued respect for the spirit forest ensures that villagers enjoy the protection of their tutelary village spirit.

Although resource mapping in traditional villages without LUP/LA demonstrated that boundaries were often not clearly defined, members of neighbouring communities respected and recognized the use zones and resource claims of their neighbours. Many traditional communities perceive land differently from the established Western idea of geographical points on a grid (Sjaastad and Bromley 1996). Land encompasses a collection of natural resources that are used by the community often independently of the coincidence of their location. Growing scarcity of land and natural resources has led to an increasing awareness of the importance of boundaries in the majority of the study villages. This has further been accelerated by the delineation of village boundaries in the LUP/LA process. However, boundary demarcation has often caused conflicts between neighbouring communities and has sometimes even compromised the resource base of the community itself (ADB 2001).

Within the collectively claimed territory of the community, households establish individual rights by productively using the resources upon and within the land (see Box 2). This right is tied to membership and non-members are either excluded or enjoy lesser rights. Extent and duration of rights depend on the respective rules and customs of the community and are traditionally determined by the labour that is invested by the household and nowadays increasingly by the scarcity of the resource.

However, tenure is not only a bundle of socially accepted rights to benefit streams from land and natural resources. Very often all of these rights only extend to certain attributes of the resource. This is well illustrated by the example that in many study villages after the rice harvest, paddy fields become the communal grazing area for all livestock in the village. Individual households only hold rights to the fruits of the labour invested in the paddy fields but this right does not exclude the collective use of the area for grazing. Another example illustrating the complex relationship of individual and collective rights is the pond in Ban Nong Sam Che.

Box 2: The Pond in Ban Nong Sam Che

Ban Nong Sam Che is named after a natural pond in the shape of a triangle that serves as water source for the village. Every villager in Nong Sam Che has access to the water of the pond. Recently, a young man in the village had the idea to release fingerlings in the pond to raise fish. All fishes in the pond now belong to the young man and his family. But the pond and the water are still the communal property of all villagers in Nong Sam Che.

The use and management of resources is governed by rules of conduct or local customary law to which all members of the group subscribe. Members are equals in their rights to use the resource. But not all members are equal regarding the quantity of resource use. Traditionally, resource units are allocated depending on the needs and capacity of the individual household. In study villages where households have started to actively participate

in the market economy, we have observed that land allocation has become increasingly uneven³.

Decision making power with regards to land and natural resources is usually vested in the village chief (Naiban) and the village committee or specialised committees for land use and allocation, where existent. The actual enforcement of local rules and regulations is often left with the elder group as guardians of harmony and solidarity in the community. In some study villages, the traditional leader 'chao kok chao lao', clan leaders, shamans, fortune tellers and other keepers of customary local law still play an important role in decision making and in mediating conflicts over land and natural resources. Decisions on local rules and the resolution of conflicts are usually made and announced in public village meetings and every villager is expected to respect the local rules and report any infringements within the boundaries of the community.

Across all study villages, communal tenure systems represent a balance between the collective rights and responsibilities of the community and individual rights and duties of community members. This balance is shifted depending on incentives for more permanent claims to land and natural resources. However, the study team observed that in most villages this shift has been realised within the customary tenure arrangement without abandoning the communal aspect of the system.

In the following sections, we will more specifically identify and categorize types of land under communal tenure and describe different communal management systems observed in the field. With a view to titling options of communal land, we will furthermore look at the characteristics of communities and user groups, and explore how decisions are made and conflicts over land and natural resources are solved.

2.1.3 Types of Land under Communal Tenure

Transect walks and resource mapping showed that villages that have fully or partly completed the LUP/LA process generally have a good understanding of their village boundaries and distinguish between a larger number of different land use types within their territory. They commonly use the categories introduced during the land use zoning⁴ step. Communities without land use zoning and planning usually differ between residential areas, permanently cultivated fields, upland fields, grazing areas, natural and domestic fish ponds and two categories of forests, production and protection forests.

In all but one of the study villages, households cultivate agricultural land in neighbouring villages or outsiders have land holdings inside the village boundaries of the study village. This mainly concerns land for paddy cultivation (57 percent of the study villages) but also upland fields (70 percent of the study villages that practice shifting cultivation). Forests for collection of NTFPs and grazing areas are often shared across village boundaries.

All of the 21 study villages have land areas that are commonly shared among all members of the community. People in all study villages⁵ perceive their forests areas to be the communal property of the entire community. This was particularly strongly emphasized for spirit or sacred and cemetery forests. In addition to sacred forests and trees, villagers also protect and worship sacred water bodies, such as natural ponds or river pools.

³ One such example is Ban Mom in Luang Namtha province. Families that first started to plant rubber now have land holdings of over five hectares. Less affluent households have sometimes less than two.

⁴ This includes residential and agricultural use areas, paddy and plantation land, as well as conservation, protection, regeneration and production (or village use) forests.

⁵ This excludes Ban Nongbua, one of the study villages in Luang Namtha province. The small village land of 55 ha does not encompass any forest area. However, villagers in Nongbua expressed their need for a common forest area and have started negotiations with neighbouring communities over a small piece of forest adjacent to their village territory.

All villages have land within their residential areas that serves spiritual or public purposes, such as land for temples, markets, hospitals, wells, school buildings and sports grounds.

Households in about half of the study villages are cultivating rice in upland fields. In all of these communities, upland areas are perceived as communal and households only establish temporary exclusion and transfer rights at certain points during the rice cultivation cycle. A number of villages also reserve areas for agricultural production where the land is not yet allocated to individual use.

For grazing areas we found the probably widest range of management arrangements. In some villages, no specific areas are designated for grazing and livestock from people inside and outside the community freely roam forests and fallowed rice fields. In other villages, households or clans establish full management, exclusion and alienation rights to fenced areas of grassland.

In the following table we have summarized all types of common or communal land found in at least one of the study villages. It is important to note that some of the mentioned land use types might be considered communal in some villages but are permanently allocated to individual households in others. For a better understanding of the rights situation applying to the identified types of land under current statutory law, we have listed them according to the land categories of the 2003 Land Law.

Agricultural land	Forest land	Cultural land	Construction land	
			Public facilities	Residential places
<ul style="list-style-type: none"> ▪ Grazing areas ▪ Upland fields ▪ Reserve land for agriculture ▪ Fishponds 	<ul style="list-style-type: none"> ▪ Village use forest ▪ Rehabilitation forest ▪ Protection forest ▪ Conservation forest ▪ Tree plantations ▪ Sacred forest* 	<ul style="list-style-type: none"> ▪ Temple areas ▪ Cemeteries ▪ Sacred forest* 	<ul style="list-style-type: none"> ▪ Schools ▪ Markets ▪ Recreation areas ▪ Health stations ▪ Wells 	<ul style="list-style-type: none"> ▪ Reserve land for house construction

Table 4: Types of common or communal lands

* Sacred forest is listed under both forest and cultural land since the nature of sacred forests fits both categories.

The presented list in Table 4 is by no means exhaustive. During the initial presentation of our results, the study team was informed about wetland areas that are communally managed by communities in some of the lowland provinces. Further research could therefore certainly add other types of communal lands.

When asked about the tenure situation in their village, people had different understandings of what is meant by communal lands. Communal lands were variously interpreted as all those lands within the village territory that are a) not individually claimed, b) preserved and protected for the common good of the community, c) available to all households with equal rights and duties, and/or d) used to facilitate communal public services.

This variety of interpretations is partly due to the fact that in accordance with the definition presented at the beginning of this chapter, in all long-established villages the entire village area could be considered as communal land. The community as a whole has laid claim to a particular territory and members have established individual rights in accordance with local rules and customs. The rights to some land use areas, e.g. paddy fields, housing plots, agricultural plantations and partly grassland, have been firmly established and passed on from generation to generation. These land areas are no longer perceived as part of the

communal domain. During our field survey, people therefore often identified communal lands by a negative definition. They are all those lands that are not individually claimed.

As the individualization of land tenure expands to areas that have formerly been regarded as common, certain areas remain communal in the sense that all members of the community continue to enjoy equal access rights and local rules for appropriation and provision are devised. For our discussion on options for communal land titling, we will focus on these types of communal lands for three reasons. First, existing local rules and management practices are needed to support and sustain communal land title. Second, these areas are particularly vulnerable in context of the rapid changes many rural communities in the Lao PDR are currently experiencing. And third, these lands are of particular importance to the livelihoods of the majority of community members.

In the next section we will therefore look at management systems of upland fields, forests and grasslands found in the study villages⁶.

2.2 Management Systems of Communal Lands

Traditional systems regulating access, withdrawal, management, exclusion and alienation of natural resources upon and within lands held in common by a village community have evolved over centuries. In many of the study villages, property relations among communities constitute 'taboo relations' with certain forms of taking and appropriating or giving and alienating considered to be forbidden. These taboos as part of the local customary law governing the use of land and natural resources are guarded by elders and traditional leaders in the community. Elders and other custodians of local law do not represent an independent authority but use their experience, knowledge and understanding to seek feasible compromises through mediation and negotiation. Local rules and customs are thus flexible and can be adjusted to fit changing circumstances.

With the advent of LUP/LA, local land and natural resource management systems have taken a more formalized character in rural villages in the Lao PDR. Rules and regulations applying to the different types of land within the demarcated village territory are stipulated in village land use management agreements. However, the formalized regulations have not fully replaced the traditional systems and we have mostly found hybrid forms of land and resource management rules in study villages that have undergone land use planning and allocation.

2.2.1 Upland Areas

Although government policy to eradicate shifting cultivation has overall led to a significant decrease in the area used for traditional upland agriculture and swidden farming, more than half of the study villages continue to depend on rotational upland cultivation for their livelihoods.

All shifting cultivation systems found in the study villages follow a rotational scheme and the allocation of individual cultivation plots to households is regulated by local rules. Outsiders are usually excluded. In some of the study villages, however, outsiders are accepted but have to pay fees for the use of upland areas⁷. Households in Ban Ompoulou, a Laosoung

⁶ It should be noted, however, that it could certainly be beneficial for a village community to have recognized communal use rights to construction land within the village boundaries. This is demonstrated by the example of Ban Nongbua, a mixed ethnic village in Luang Namtha province, where villagers have swapped smaller communal areas within the settlement for a large plot to build a school.

⁷ In Ban Pia, a Khammu village in Phongsaly province, outsiders pay 30,000 kip maintenance fee per swidden plot to the village community.

Khoe village in Phongsaly province, regularly rent swidden fields from neighbouring villages (see Box 4).

In the visited Khammu communities in Phongsaly province, all households of the village rotate annually between large blocks of land for upland rice cultivation (see Box 3). In Ban Houyhoy, an Akha village in Luang Namtha province, families discuss the location of their individual swidden fields within a larger designated area at the beginning of the cultivation cycle. Location and size is finally approved by the Naiban and the village committee based on available Labour in the family. In the two Hmong communities in Xiengkhuang province, households have adopted an integrated upland rice and livestock grazing system. Grazing areas, if suitable, are regularly used to plant rice and maize. After one year of cultivation, the area is again used for cattle grazing (see Box 6).

Box 3: Shifting cultivation practice of Ban Pia

All farming households in Ban Pia, a Khammu village in Phongsaly province, cultivate upland rice in the same large area or block of land. There are several such blocks in different stages of fallow within the village territory. Every year at the beginning of the cultivation cycle a new fallowed block is selected for all households to do upland farming. Households remember the location of their previously cultivated plots since they still hold exclusion rights to NTFPs found on their swidden areas. They also enjoy first rights to their former plot when the area is allocated to individual families. According to the local custom, however, households will not cultivate the same plot for more than three times. Size and location of individual plots are discussed in a series of village meetings and depend on the actual need and capacity of the households. Villagers in Ban Pia follow the common Khammu tradition of omen taking. If after clearing a small part of the new field something that is taboo occurs in a dream or any other bad omen is met, the piece of land is abandoned and the household will look for a new place. This custom and other traditions related to the cultivation practices of the Khammu are well described in Simana (undated).

A common feature across all study villages is the communal and individual dimension of shifting cultivation systems. All villagers including newcomers and young families have equal access rights to the shifting cultivation area of the community. As soon as individual plots are allocated to the farming household, the household has full withdrawal, management and exclusion rights. Households do not enjoy rights of transfer and alienation. The swidden plots can not be sold and even the failure to cultivate the field can lead to the allocation of a smaller sized plot in the following year.

Traditionally, it depends on the respective custom of the community or ethnic group for how long households maintain exclusion rights to their swidden areas. In the studied Khammu villages in Phongsaly province, households maintain exclusion rights to their fallowed swidden plots until the beginning of the next cultivation cycle (see also Box 3). In Ban Sophoune, a mixed Thai Dam, Thai Daeng and Khammu village, households had no individual rights to the fallows. The same holds true for the visited Akha villages in Luang Namtha province. In many of the study villages, fallowed swidden areas are used for the cultivation of perennial cash crops and tree plantations and with the investment of labour households uphold their rights to the plots.

We also observed that the scarcity of the resource plays an increasingly important role in the articulation of individual rights to upland areas. In Ban Ompoulou, a Sungkor village, households have fixed plots within the upland rotation zones and accommodation of the needs of new families has become increasingly difficult (see box 4).

Box 4: Changes in upland management in Ban Ompoulou

Similar to the visited Khammu communities in Phongsaly province, households in the ethnic Sungkor village Ompoulou rotate between large blocks of upland areas for rice cultivation. In the past, individual plots were allocated in accordance with the needs and capacity of the household. As a result of land use zoning and village boundary demarcation, the upland area has been reduced in size and families seek to lay permanent claims to their swidden areas. Ban Ompoulou is a fast growing community. Every year two to three new families join the currently 73 households and it has become increasingly difficult to allocate upland fields to every family in the village. The Naiban expressed great concern that the situation could cause internal problems. It has already led to disputes with neighbouring communities since land scarcity has forced individual households to encroach onto neighbouring village territories. To avoid conflicts, people in Ban Ompoulou have no choice but to negotiate fees for renting upland areas from their neighbours. Last year, \$US 70 had to be paid for the upland fields of fifteen households.

2.2.2 Grazing Land

The raising of livestock rates only second in its importance for rural livelihoods after rice cultivation. Yet, in over 60 percent of the study villages, livestock is the main source of income. In more than half of the communities, villagers have delineated specific grazing areas or zones. Grazing lands are mainly managed at the village level but in some of the study villages, smaller livestock groups have formed that jointly manage a particular area within the village (see Box 5). In a number of villages, grazing areas are shared between neighbouring villages. This can include a well-defined group of users as it is the case in Ban Or An, a Hmong village in Xiengkhuang province. Or there can be no restrictions to the participation of neighbouring communities, as we observed among Phuane villages.

Box 5: Livestock groups in Ban Houyhoy

A group of households in Ban Houyhoy, an Akha village in Luang Namtha province, jointly manages large areas for cattle grazing, called *Khang*. *Khang* are fenced areas located along river valleys in fallowed upland fields or re-growth forests. Every household in the village that has contributed Labour to erect the fence is part of the livestock group and can have an unlimited number of cattle grazing in the *Khang*. Late comers can join by contributing Labour to maintaining the fence. All other households are excluded from the use of the *Khang*.

In Ban Nong Sam Che, a Hmong community in Xiengkhuang province, households establish rights to grazing areas based on clan relationships. Founding and older clans enjoy certain prerogatives over later arriving clans. Since livestock raising has replaced poppy cultivation as the most important economic activity, villagers have started to fence all valuable grassland areas. The lack of communal grazing areas has led to conflicts within the community (see Box 6).

Box 6: Integrated upland rice and livestock grazing in Ban Nong Sam Che

For decades, grassland areas in Ban Nong Sam Che have passed through stages of individual, group-based and communal tenure. Traditionally, all families in the Hmong village enjoy equal access rights to suitable grassland areas for the cultivation of maize and upland rice. By staking a claim at the beginning of the cultivation cycle, a household secures exclusion rights to a certain plot. After the harvest, the fallow becomes again a part of the grassland area managed by a group of families. Claims to grassland areas are based on clan membership and people respect prior rights of longer-established clans. Since the eradication of opium cultivation in 2002, livestock has become even more important and families of all clans have started to erect fences on grassland areas. But not every household can afford fencing material and often the best grazing areas are claimed by members of the older clans. The construction of fences has not only stopped the practice of claiming grassland for shifting cultivation, it has also considerably reduced the size of common grazing areas. Disputes have erupted between clans over who should withdraw their claims. Older clans have finally started to take down fences in order for common areas to be re-established.

Grazing lands are managed differently across the study villages. But what seems to be clearly communal or individual management of grazing areas does not necessarily reflect the underlying tenure arrangement. The practice of the two Phuane villages in Xiengkhuang province is better characterized as an open access situation than a communal management of grazing areas. Households in Ban Khai and Ban Phone Kam generate most of their income from paddy cultivation and livestock raising is practiced in an extensive manner. The grazing areas are of low quality and do not justify the costs of devising clear management rules. The village administration in Ban Khai preferred individual over communal titles for the grazing land to encourage investment and better livestock production. On the other hand, individual titling of grassland in Ban Nong Sam Che would jeopardize the fragile resource management system of the community. Although fences and the group based management of the grazing areas seem to be a strong articulation of private rights, villagers clearly rejected the idea of individual titles in favour of communal registration of their grazing areas.

2.2.3 Sacred and Village Use Forests

Forests in all study villages are considered the communal property of the community and all communities have rules and regulations for the management of forests within their village territory⁸. Communities with village land use management agreements have adopted the guidelines for the LUP/LA process. Villages without LUP/LA usually distinguish between use and protected forests. Sacred or spirit forests play a key role in maintaining village harmony and solidarity and enjoy the highest level of protection. As illustrated by the example of the sacred district forest in Ban Mom, a Lue community in Luang Namtha province, the importance of sacred forests can also extend to people from other village (see Box 7).

Box 7: Sacred forests in Ban Mom

There are two sacred forests in Ban Mom, one for the village spirit and one for the spirits of the district. Both forests are strictly protected and people do not use or harvest any resources in either one. Ban Mom is the only Lue village in the district. Once a year, villagers from the neighboring Akha villages together with Mom villagers celebrate a festival for the spirit of the district forest. The annual ritual serves to exchange information and also strengthens harmony between the villages belonging to two different ethnic groups. Unfortunately, in the past the government has discouraged such festivals and some of the remoter Akha villages no longer participate.

⁸ Although previous studies (Lao Consulting Group 2002) claim that Hmong communities have not developed customary rules for the management and use of common forest areas due to migratory tendencies, we also found traditional forest management rules among the Hmong communities in Xiengkhuang province.

In the study villages with LUP/LA, the village administration exercises a certain discretion in the implementation of the fee structure stipulated in the village land use management agreement. Enforcement of fees and fines depends on the scarcity of the respective forest resource and the situation of the household in question. Poor households are often exempt from paying fees for the use of forest resources.

In the past, outsiders enjoyed access rights to NTFPs and forests were often shared between several villages. The demarcation of village boundaries has created a stronger sense of village-based claims to forests and outsiders are more restricted in the use of forest resources. Often higher fees apply to the use of resources by outsiders. In none of the study villages, community members have the right to sell timber to people from outside the village and all collected fees contribute to the income of the entire village community.

Forests are mostly managed at the village level but there are exceptions. In the visited Phuane villages in Xiengkhuang province, villagers live in smaller hamlets close to their paddy fields. Several such hamlets constitute the village. For better management and protection, the responsibility to the nearby forest areas has been transferred to the individual hamlets. However, all villagers still enjoy equal access rights to forest resources. In Tang Alai, a Makong village in Savannakhet province, the village territory is arranged according to clans and members of the same clan manage a common forest area.

2.3 Characteristics of Communities and User Groups

From the analysis above, we can conclude that claims to communal areas can be based on membership in a village cluster, a village, a hamlet, a clan, or a user group. Access rights to common resources further depend on age, social status or gender. Inclusion or exclusion from group membership is based on boundaries that are predominantly drawn on social grounds. In all visited communities, villagers have a good understanding of who is a member and who is not. There are often customary restrictions to membership. In some villages, only family members or spouses are accepted to join the community. Others request someone from the village to act as guarantor before allowing outsiders to live in the community. Many villages would not accept people that follow different traditions, and in the majority of the study villages, the sale of land to outsiders was restricted or did not occur at all.

It is therefore important to note, that the administrative village unit does not necessarily reflect the socially constructed 'natural village' or village community. The customary village community can be smaller or larger than the administrative village that is based on territory. We will illustrate this with the following three examples.

Villagers in Ban Nathong, a Makong village in Savannakhet province, distinguish between village use and protection forests and national production and protection forests. Although all four forest categories are part of the administrative village territory, villagers only perceive their traditional forest land as part of their village communal property.

The boundaries of Ban Nong Sam Che, a Hmong community in Xiengkhuang province, have been delineated for security reasons in the early 1990s. The administrative village territory encompasses 572 ha of land including 87 ha of upland area. Since the area is not suitable for paddy all households cultivate maize and rice in upland fields. Despite the short cultivation cycle of 3 to 4 years, the upland area is not sufficient for the 64 families in the village. For decades, villagers have used upland fields officially located in neighbouring villages. The community of Ban Nong Sam Che would not survive if the administrative boundaries were to be enforced as resource use boundaries.

Ban Thongnamee, a predominantly Hmong village in Bolikhamxay province, experienced the influx of more than one hundred families in the course of only one year. All families are part of the administrative village but they have yet to form a community and devise rules for the management of common resources. The newly arrived families put pressure on the resource base, particularly the communal areas of the village, and conflicts are almost inevitable. This is even more pronounced in situations where the late comers belong to a different ethnic group.

In the case of the 21 study villages, the majority could be considered village communities and access and management of common resources is based upon membership in the village. For the purpose of communal titling, however, it is important to clearly identify the social and territorial borders of communities and user groups, as well as their specific attributes. Access to markets for example has created new livelihood opportunities for villagers but at the same time has led to a growing socio-economic stratification within communities. Households are beginning to view communal areas differently. What is seen as a source of subsistence for one household is a potential area for cash crop cultivation for another.

There also seems to be a growing difference between villages. Before LUP/LA, several villages shared the common grazing area next to Ban Or An, a Hmong village in Xiengkhuang province. After land use planning and allocation, only the three villages that have a common border with the area maintain their claim to the grazing zone. All other neighbouring communities are excluded. Outside interventions and government programs can create or increase asymmetries between villages that are further pronounced by language and information barriers.

Probably more homogenous in their structure are user groups that share the same livelihood and resources. Apart from the example in Ban Houyhoy (see Box 5), the study team has learned about livestock or NTFP production and marketing groups in several parts of the country. More research would be needed to better understand the tenure and management systems of such economic user groups.

2.4 Conflicts and Conflict Resolution

From the information collected during our field survey we can distinguish between three levels of conflicts regarding communal lands: a) conflict between villagers, b) conflicts between neighbouring communities and c) conflicts between communities and outsiders⁹. Two thirds of the study villages claim that conflicts have increased compared to ten years ago. About half of the villages report conflicts with neighbouring communities. Over a third of the villages have experienced conflicts with outsiders or have come into conflict with state authorities over the use of forest resources.

All study communities have developed ways of conflict resolution that are based on core principles of mediation and negotiation. First time violations are often only rebuked by the village administration or the elder group and mutually agreeable solutions are negotiated. For continued or severe violations offenders are fined in accordance with local customary law, the stipulations of the village land use management agreement or a combination thereof. Traditionally, fines have been paid in the form of domestic animals offered at reconciliatory gatherings. The gravity of the infringement determines the kind and number of animals being fined (see Box 8). With the introduction of a cash economy in the village, fines are nowadays more often paid in cash to the village administration.

⁹ The term 'outsider' refers to people that are non-community members and do not share the same tradition of local customary law of the community. It does not include members of neighbouring local communities.

Box 8: Traditional conflict resolution in Ban Tang Alai

Villagers in Ban Tang Alai, a Katang village in Savannakhet province, protect their sacred forest from encroachment by enforcing local customary rules. Anyone who is found cutting timber in the sacred forest will first be warned by the village elders. Second time violators are fined a pig or even a buffalo, depending on the amount of timber. So far one cattle and tree pigs have been collected from villagers and no one has refused to pay the fine. People in Ban Tang Alai believe that disturbing the village spirits by cutting timber in the sacred forest can cause illness and misfortune for all villagers. If the violator does not appease the spirits with an animal sacrifice he or she will be made responsible – and has to pay compensation – for all bad incidents in the village.

The vast majority of study communities claim that they feel confident to resolve internal disputes over land and forest resources using traditional or local ways of conflict resolution. In the case of Ban Nong Sam Che, however, district officials have been asked to mediate in the conflict between the older established and the later settling clans of the village (see Box 6). In addition, ethnically mixed villages often rely on government authorities to intervene in internal conflict situations.

Villagers assert that outside intervention is mostly welcome in conflict situations involving neighbouring communities. Statutory rules and authorities are also becoming increasingly important when conflicts occur between the community and outsiders. Traditional enforcement structures and mechanisms of conflict resolution often fail to solve problems related to the encroachment of outsiders to the communal property of the community. In the majority of cases, the village administration turns to the District Agriculture Forestry and Extension Office (DAFEO) for support. Over half of the study villages have reported land conflicts to the office in their districts with mixed experiences. Villagers in Ban Ompoulou, a Sungkor village in Phongsaly province, for example felt that they were in a disadvantaged position when negotiating with district officials. In addition to the language barrier, people in Ban Ompoulou claim that neighbouring Thai Dam villages would allegedly receive preferential treatment from government authorities.

2.5 Role and Importance of Communal Lands

In all study villages, communal lands play an essential role for the livelihoods of individual households and the social and economic well-being of the entire community. Rural households use communal lands for livestock raising, cultivation of staple and cash crops, as well as collecting firewood, medicine, food and construction materials. The communal property of the village is moreover an integral part of the spiritual and cultural identity of the community.

2.5.1 Upland Areas

Communal upland areas play a key role in providing land for all members of the community regardless of ethnicity and gender. If sufficient land is made available, traditional allocation practices can accommodate an increase in population without compromising the rights of young families and new comers. Particularly poorer households rely heavily on upland fields for the production of their staple food since they often lack access to suitable land or the means to invest in the development of paddy fields. In many cases fallowed upland fields become the source of NTFPs and grazing land for livestock that are available to all community members.

In many of the study villages, people have expressed their concern that the allocation of communal upland areas to individual households creates a widening gap between the

families in the village. For landless or land poor households there is not enough land even for subsistence production while wealthier households with more capital and Labour claim large amounts of land. The current rapid expansion of rubber plantations into upland areas poses an additional threat to communal upland management systems with similar unequal distributive effects.

2.5.2 Grazing Land

According to a study by the ADB (2006), 65 percent of surveyed households in six northern provinces of the Lao PDR get their income from the sale of livestock. Livestock plays an essential role in the household economy. It is accumulated capital that can be sold to buy additional food and other necessities for the family, finance important purchases such as housing material and meet pressing needs including medical bills.

Traditionally, villagers keep their livestock in common grazing zones, fallow land, and forest areas within or outside their village territory. Livestock keeping is part of the farming system of individual households but unlike other permanently used agricultural lands, grazing areas are mostly managed communally.

Without sufficient communal grazing areas villagers are likely to discontinue keeping livestock. Introduction of cash crop production has led to a rapid conversion of communal areas, especially grazing areas and fallow land. As land available for livestock decreases, farmers have no choice but to sell off their animals.

For some communities, the allocation of grassland to individual households is an option to encourage farmers to increase the productivity of grazing areas. However, this would only be successful if combined with the introduction of new technologies and grass varieties to improve fodder quality. In the case of other communities, the individualization of tenure on grassland could destroy well-balanced and integrated communal resource management systems. Hence, no standard solution exists for the registration of grazing areas and titling options need to be discussed with informed participation of local communities.

2.5.3 Sacred and Village Use Forests

Forests and forest lands provide space and resources for communities and their members. In 2003, communally used forest occupied 150,000 ha or 1.3 percent of the total forest area of the Lao PDR (Braeutigam 2003).

Sacred or spirit forests play a key role in maintaining harmony and solidarity, often beyond village boundaries. They are the basis for the spiritual and cultural identity and integrity of the community. According to the people in Ban Nathong, a Makong village in Savannakhet province, the sacred forest is the life of the community. Encroachment and desecration would seriously endanger every member of the community.

Village use forests provide food security for members of the community in addition to cash income. Including hidden values, Foppes (2003) estimates that NTFPs generate 70-80 percent of the total family income in some villages. NTFPs are particularly important as source of income for poor families, women, and other disadvantaged groups. Poor people tend to rely on forest resources for some of their subsistence needs, as a "safety net" in the event of emergencies, as a "gap filler" in the event of seasonal shortages and, occasionally, as a means to permanently escape poverty (Angelsen and Wunder 2003).

Communal forests like other communal areas are considered buffer zones for poor households. Equal and flexible access rights to forest resources ensure harmony and solidarity within the village by mitigating impacts of a widening gap between poorer and more affluent households. Despite their crucial importance, forests have come under increasing pressure from many directions and encroachment of forest areas has been the main source of conflict in the study villages.

2.6 Trends and Implications for Communal Land Management

Communal land tenure systems in the Lao PDR are undergoing rapid changes. Villagers in all study communities confirmed that communal lands within the village territory have been reduced in size and communal management systems have changed over the past ten years. Driving forces for changes are many and various. Figure 2 summarizes main factors that lead to the conversion of communal lands to private holdings.

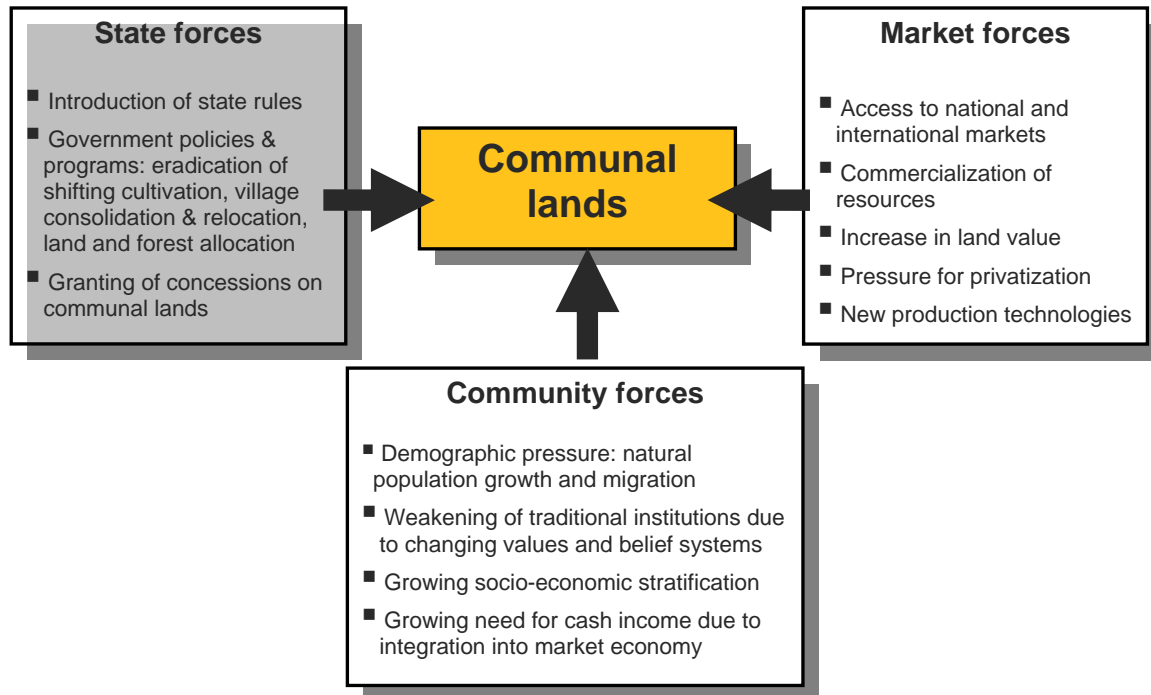


Figure 1: Driving forces of change in the management of communal lands

2.6.1 State Forces

Government policies and programs on eradication of shifting cultivation, land and forest allocation and relocation and consolidation of villages have had significant impacts on communal land tenure and management systems of local communities.

During the implementation of the LUP/LA program customary resource use and management practices have often been neglected and thus undermined. Previously jointly managed inter-village areas have been allocated to homogenous spatial village units with full exclusion rights, leading to conflicts between neighbouring villages (Evrard 2003). Restrictions in the use of upland areas for shifting cultivation due to unbalanced land use zoning in favour of protection and conservation forests has ironically forced people to encroach on their own or neighbouring forest areas (Moizo 2004). Relocation and village consolidation have further increased the pressure on communal lands and access to productive land has become highly competitive. The growing scarcity of land has led to stronger manifestations of individual claims and newly erected fences exclude other members of the community from accessing and using resources on previously communal areas.

There is a clear danger that an expansion of land titling as it is currently undertaken in mostly urban and peri-urban areas of the Lao PDR could further stimulate privatization of lands while ignoring the importance of managing communal property (Fujita et al. 2006).

According to our field survey, the biggest threat to communal lands is the granting of concessions to outside investors and the conversion of communal lands to rubber

plantations. In four of the study villages, government officials have tried to persuade villagers to enter into contractual agreements with private companies over the cultivation of rubber trees on parts of their communal lands. Villagers reported to have little knowledge of rubber cultivation and one community has successfully rejected the plan. The other three await the demarcation of the area for the rubber plantation but have expressed their concern that it will impact on their swidden, grazing and forest areas.

In Bolikhamxay province, the communal forest area of two of the study villages have been allocated to private companies to plant eucalyptus and coconut trees. Not only does the granting of concessions give land rights to outsiders, it also restricts access of local people to areas where villagers, especially the poor or landless households, have traditionally collected food, firewood and NTFPs for their living.

2.6.2 Market Forces

The cultivation of rubber and other plantation crops is not only promoted through concessions granted by the state. Marketable crops are also grown by small farmers to satisfy an increasing need for cash income. Growing international market integration and better access to national markets has prompted farmers to expand their cultivation land to produce cash crops. Low soil quality, particularly in the uplands, and the lack of inputs makes it the better economic choice to expand land use instead of increasing the intensity of production. Land expansion is often occurring at the expense of communal lands, including forests and swidden areas.

More affluent households benefit from the opportunities provided by markets while poorer households often lack the means to secure their subsistence and invest in cash crop production. Diminishing communal land resources, however, affect poorer households more than those better-off. As competition over resources intensifies and the prize for land increases it will become more and more difficult for poorer households to secure their livelihoods.

2.6.3 Community Forces

An increasing socio-economic stratification due to market penetration and the undermining of traditional authority structures by introducing statutory rules leads to changes in the social fabrics of local communities. In a number of study villages, we observed that the gap between rich and poor households has widened and principles of equity and solidarity erode. Traditional beliefs are also changing and villagers reported cases of encroachment onto sacred forests. Customs and traditions moreover often fail to protect communal resources where people of different ethnic backgrounds are settled in the same village.

In addition, all study villages have experienced demographic changes as a result of both natural population growth and migration. Communal systems can cope with natural population growth but are less resistant against influx of immigrants. Rapid population increase as experienced in Ban Thongnamee (see section 2.3 above) and other study villages in Bolikhamxay province puts enormous pressure on communal lands and resources. Communal forest lands are converted to individual plots for agricultural production since the new comers have no other choice but to clear forests in an attempt to eke out a living in the new place.

On the other hand, we witnessed numerous efforts by communities across all ethnic groups to protect their communal lands. In situations of growing scarcity of land and natural resources, villagers have become increasingly aware of the importance of communal lands.

The following examples shall illustrate how communities defend their communal property against internal and external forces.

In **Luang Namtha province**, the Naiban of Ban Mom, a Lue community, fights to protect the remaining communal forest in the village from being converted to rubber plantations. The village chief of Ban Nongbua, a mixed ethnic village, negotiates with a neighbouring Lue community over a forest area to become the communal forest of all villagers. Villagers in Ban Houyhoy, an Akha community, have delineated upland areas that cannot be planted with permanent crops to ensure that sufficient land remains for all villagers to do swidden farming.

In **Phongsaly province**, villagers in Ban Phia, a Khammu community, have agreed to protect areas of degraded forest as future communal use forest. In Ban Sophoune, an ethnically mixed village, the village administration has limited the maximum land size for rubber plantation to 2 ha. This will protect upland areas for swidden farming and allow a more equal distribution of benefits from rubber cultivation. The village chief of Ban Ompoulou, a Sungkor village, is asking for all upland areas to be reverted to communal property in order to facilitate a more equitable allocation of the scarce land area.

In **Xiengkhuang province**, members of the founding clans of Ban Nong Sam Che, a Hmong village, are taking down fences around grasslands. The lack of communal grazing areas has led to serious conflicts within the village. In Ban Khai, a Phuane community, villagers are planting trees on degraded areas in a communal tree plantation.

In **Savannakhet province**, the village administration of Ban Tang Alai, a Katang community, has strictly banned the sale of timber. Since the village recently got road access, villagers are worried about the impact on their communal forest. District officials trust in the local customary law of Ban Nathong, a Katang community, to protect the national conservation and production forest. They seldom interfere but leave it to the community to enforce the rules and regulations.

In **Bolikhamxay province**, the communal land of all study villages has come under such pressures that communities often lack the means to protect their communal property. Land concessions, high influx of people and unclear tenure situations have led to a rapid decline of communal areas. Villagers expressed their hope that the registration of their communal lands in the name of the village would support them in protecting their lands and forests.

2.7 Perception on Communal Land Registration

Households in about one third of the study villages have received Land Declaration Certificates (land tax receipts) or Temporary Land Use Certificates to their paddy fields, sugarcane and rubber plantations, or housing plots. Across all provinces, villagers agree that the main benefit from the certificates lies in a better prediction of the amount of tax to be paid annually. Since the certificate mentions the size of the plot, the land tax is fixed. Households without certificates have to negotiate the tax payment with district finance staff and according to the villagers pay often more than the households that hold certificates. However, an assessment of allocation and registration of individual land is beyond the scope of this study and can be found elsewhere (see for example Lao Consulting Group 2002).

Since land registration and particularly communal land titling was found to be an unfamiliar concept for many of the people interviewed, the following summary of ideas expressed by villagers has to be seen in the light of limited understanding of the nature of communal land registration. In general, people in all study villages responded positively to the idea of communal land titling. One of the visited Hmong communities in Xiengkhuang province has so far rejected all attempts of official land allocation in their community but showed openness to the idea of communal registration of their village lands.

When asked about titling of the lands within the village territory, people in the study villages preferred their sacred and village use forests to be registered as communal property in the

name of the village¹⁰. However, not all communities agreed on the way to register uplands and grazing areas. The majority of villages practicing swidden farming opted for communal titles. In two communities where the individualization of tenure has already far progressed, the village administration considered individual titling as the more feasible option. Villagers also felt differently about grazing areas. In villages with more extensive forms of livestock keeping, individual titling was seen as a way to provide an incentive for investment and better management of grazing land. In others, particularly the Hmong villages, people were concerned that individual titling could destroy the flexible local land use and allocation system (see also section 2.5.2). Villages also agreed on communal registration of reserve areas for housing, as well as land for schools, cemeteries, markets and other public areas. In general, villagers were concerned about land tax. Some communities doubted that they could afford land tax on large areas of communal lands. Again others preferred paying land tax on communal lands to assert their rights vis-à-vis the state.

Regarding the perceived benefits of communal land titling, villagers unanimously mentioned the protection of their communal resources as the first priority. There was strong agreement among long-established communities across all ethnic groups that their local customary tenure systems would safeguard the equitable and sustainable use of communal resources. Villagers maintained, however, that outside pressure and the lack of official recognition continued to weaken customary institutions and authority. As a result, villagers face difficulties in enforcing their local rules, particularly towards outsiders.

In some villages with village land use plans and management agreements, people reported that the situation has improved after village boundaries were clearly demarcated. On the other hand, little recognition of existing local land management systems in the implementation of LUP/LA, as well as limited government support for monitoring and enforcement of the agreements, has partly contributed to increased tenure insecurities and has not stopped the widespread conversion of communal lands. Ban Houyhoy, an Akha village in Luang Namtha province only completed the improved process of LUP/LA in 2005. Visiting the village in November 2006, we found most of the regeneration forest turned into rubber plantations managed by outsiders.

Since LUP/LA only transfers management responsibility and fails to recognize management authority of communities, people in the study villages expressed their hope that communal titles to their lands would provide them with both. Rights as well as responsibilities to communal resources form the basis for sustainable, equitable development and the socio-cultural integrity of rural communities.

In the following chapters, we will discuss options for the legal recognition and successful implementation of communal land titling in the Lao PDR.

¹⁰ There was only one exception. The Naiban of Ban Tang Alai, a Makong village in Savannakhet province, suggested registration of forest areas to the clans in the village. He felt that this would better clarify rights and responsibilities and hence improve forest management.

III. Towards Communal Land Registration in the Lao PDR

Before identifying concrete steps towards communal land registration, it is important to discuss objectives of communal titling, as well as risks involved in the formal registration of communal land tenure systems. The following three questions shall guide us through the discussion:

- What are the objectives for communal land registration?
- What are the risks involved in the registration of communal lands?
- What are options for communal land registration?

3.1 Objectives for Communal Land Registration

The results from the field survey presented in chapter 2 of this paper demonstrate the importance of communally held lands for the social, cultural and economic well-being of individual families and local communities as a whole. Objectives for the recognition and formal registration of communal rights in land are therefore well in line with national development goals.

The government of the Lao PDR has set an ambitious target to fully **eradicate poverty** by the year 2020. This is part of the overall goal to exit the group of Least Developed Countries (LDCs) and to achieve improved well-being for all the Lao people (NSED 2006-2010). With regards to the use of land and natural resources, the most important policy-related objective is the **improvement of household food security** (NGPES 2004). According to the Participatory Poverty Assessment, the most common form of compensating for rice shortages among poor villages was found to be consumption and sale of forest products (ADB 2001). Non-timber forest products (NTFPs) contribute about 50 percent of the cash income of rural villages in the Lao PDR and 20 to 30 percent of the country's GNP through subsistence use (FAO 2002)¹¹. More than 300,000 families derive their livelihoods directly from the forest (Chiengthong 2003). Securing access and use rights to communally held forest lands through the registration of communal land is therefore a direct contribution to the objectives of improved food security and poverty eradication.

The NGPES moreover emphasises the importance of community-led decision-making and resource allocation in integrated land management. Over 656,000 hectares of productive natural forest in Laos has been devolved to participatory joint management by village communities and forestry staff (Poynton 2006). The role of local communities in the sustainable use, management as well as protection of land and natural resources is increasingly recognised in laws and policies of the Lao PDR. However, only management rights are transferred and tenure insecurities and the lack of enforcement have led to unsustainable use of resources by community members and outsiders (Hirsch et al. 1999, Kirk 1996).

The formal registration of communal rights to land is therefore a logical and urgent next step to **improve tenure security** and **strengthen the management authority of communities** in order to protect local communities from the loss or unsustainable exploitation of the natural resources they depend on for their livelihoods.

As the most relevant sector strategy paper with regards to the use and management of forest resources, the Forestry Strategy to the Year 2020 of the Lao PDR recognizes the importance

¹¹ The FAO publication refers to results presented in a study by Foppes and Ketphanh (2000). In a later study, Foppes (2003) estimates that including hidden values NTFPs generate 70-80 percent of the total family income.

of village based forest management as an integral part of rural livelihoods. With regards to management planning, the strategy paper recommends a focus on “sustainable and equitable use of common land and forest resources” (FS 2020: 62). All communal tenure systems analysed within the framework of this study contain mechanisms to ensure **equitable access to productive resources**. The formal recognition of communal tenure through communal land registration could therefore not only help to avoid undesirable distributive effects of land registration but also allow for a **gradual adaptation** of rural communities to a rapidly changing environment.

In 2001, the ADB initiated a Participatory Poverty Assessment in the Lao PDR. The results highlight the cultural diversity as one of the main assets of the country. The recognition of communal rights to land as part of the customary tenure systems of all ethnic groups in the country would help to maintain and **promote a peaceful multi-cultural society**. This policy goal is enshrined in the Constitution (2003) and in the Resolution of the Party Central Organisation Concerning Ethnic Minority Affairs in the New Era (1992).

Finally, building upon customary arrangements ensures **effectiveness and acceptance of formal land registration** by reducing the gap between customary and statutory land tenure systems (see discussion below). The failure to recognize customary rights will eventually lead to a disconnection between legal stipulations and actual practices. Such discrepancies not only result in quickly outdated land registries, they are often the cause for widespread conflicts and open hostilities (World Bank 2003).

Based on the discussion above, the environmental, economic, social and cultural objectives for communal land registration can be summarized as follows:

- To contribute to the goal of poverty reduction and full eradication of poverty by 2020
- To ensure equitable access to productive resources and food security
- To strengthen management authority of communities
- To ensure sustainable use of natural resources through improved tenure security
- To allow for gradual adaptation to a changing environment
- To maintain and promote cultural diversity
- To ensure effectiveness and acceptance of formal land registration by reducing the gap between customary and statutory systems

3.2 Risks involved in the Registration of Communal Lands

Despite the potential benefits for the economic and social-cultural development of local communities in the Lao PDR, communal land registration also has a number of risks. The registration and titling of communally held lands will for example inevitably lead to a loss in the complexity and flexibility of customary tenure systems and therefore affect their very nature. Land registration and cadastral mapping represent a simplification of traditional resource use practices since they are assessment tools that only consider the dimension of land and its value as productive asset or commodity (Scott 1998 quoted in Fujita et al. 2006). National legislation also treats agricultural land different from forest areas. Customary systems, on the other hand, accommodate a wide array of multiple uses and users and do not differ between agricultural and forest land.

On the other hand, a certain degree of formalization is necessary since enforcement of customary rules depends on statutory support. Transparency and mechanisms of accountability are required in order to protect community members from opportunistic behavior of traditional leaders and arbitrary decision making. The nature of the procedures for the registration and management of communal lands also have to strike a difficult balance between the rights of the community versus the rights of its individual members.

Risks involved in the registration of communal land can be summarized as follows:

- Several communal tenure systems lack robustness or authority to provide sufficient tenure security to the members of the community, particularly towards outsiders.
- Formal registration restricts or freezes changes in communal tenure systems.
- Formally recognized communal tenure arrangements fail to respond to challenges of tenure individualization and lead to the development of informal land markets.
- Customary mechanisms for land allocation in communal tenure systems are not in line with government goals of gender equity and general principles of fairness.
- Demarcation of boundaries of communally held lands may create inter-community conflicts, particularly in situations of asymmetric information of communities and different access to resources, as well as bargaining power.
- The process of communal land registration lacks mechanisms for local participation and therefore fails to reflect the land use reality of communities and user groups.
- Communal land is registered in a situation where communities lack common value and belief systems and/or a common history of land use and management, e.g. relocated and merged villages.
- Multi-stakeholder policy development process related to communal land registration progresses slowly and involves high costs.
- Legal provisions regarding communal lands are not implemented since rights of local communities are subordinated to commercial development interests.

In order to avoid or at least mitigate some of the mentioned risks, the role of the state in the recognition and formalization of communal land tenure systems needs to be carefully considered.

3.3 Options for Communal Land Registration

The above identified objectives and risks related to the registration of communal lands are important factors in determining what approach should be taken towards communal land registration in the Lao PDR. The social, economic and cultural benefits of recognizing customary land tenure systems can only be realized if communal tenure to land is firmly secured. Tenure security should therefore be the central concern of communal land registration. In this context, Alden Wily (2005) calls for a general review of the purpose of titling, claiming that an over-focus on collateralization has “muddied clarity as to what must remain the founding reason for recording customary rights – simply to secure that tenure” (ibid: 2).

According to Fitzpatrick (2005), the level of state intervention through laws and policies on the registration and management of communal land should be determined by the specific cause of tenure insecurities communities are facing. He distinguishes between three main sources of tenure insecurity in customary systems: 1) internal conflict within the group, 2) encroachment of outsiders and/or interaction with state officials, and 3) emergence of dealings with outsiders.

Our observations from the study villages confirm Fitzpatrick's categories of tenure insecurities for local communities in the Lao PDR. In Figure 2 (see page 20), we have illustrated how communal lands are under increasing pressure from community, market and state forces. Based on the field survey, the study team concludes that currently the most immediate threats to communal lands are external forces. According to Fitzpatrick (2005), securing communal tenure would therefore be best approached by recognizing the internal authority of the community and/or user group, demarcating group boundaries and providing reliable enforcement mechanisms by the state.

This would support a rather 'minimalist approach' towards the recognition of communal tenure systems. In a 'minimalist approach' no attempt is made to define the groups that hold customary land and state law is not introduced into areas governed by customary law. The state would simply recognize the existence and legitimacy of customary systems. Experiences from countries where customary tenure arrangements were recognized in separate systems from that administering statutory rights demonstrate the shortcomings of this approach. Establishing customary rights isolated from the economic mainstream compromises development options of communities (Foerster and Apel 2004). It also invites opportunistic behaviour of institution shopping by wealthier and more knowledgeable individuals. Instead of protecting the resource base of communities, the existence of parallel institutions can further increase tenure insecurities.

It is therefore recommended to recognize customary tenure as private group-owned property in the statutory system of land administration and refrain from setting up a separate system. In the Lao PDR, statutory rights and responsibilities related to land and natural resources are broadly defined in the Constitution (2003), the amended Land Law (2003) and implementation guidelines, the Forestry Law (1996) and the Property Law (1990). In chapter 5, we will analyze in detail the legal implications of the recognition of communal rights to land in statutory legislation.

However, there is a general understanding that the formal registration of communal claims to land under statutory law will lead to regulations that are not in full compliance with customary practices. The question of how to deal with - and possibly narrow - the inevitable gap¹² between customary and statutory rights needs to be carefully addressed.

Let us briefly recall the objectives for communal land titling. The formal recognition of communal tenure systems strengthens the management authority of communities in order to ensure equitable access to productive resources as well as food security, contribute to poverty reduction, allow for a gradual adaptation of communities to changing circumstances, and ensure sustainable use of natural resources. Registration of communal lands is therefore not an end in itself. It legally empowers a community to protect and manage its resource base.

The nature of policies and laws related to communal land registration therefore needs to consider criteria for successful community based management of land and natural resources. Ostrom's (1990) design principles for robust common-pool resource management systems provide a useful guidance. The author stresses the importance of (1) clearly defined boundaries, (2) transfer of authority to communities and user groups to devise appropriation and provision rules, (3) access to low-cost monitoring and conflict resolution mechanisms and (4) systems of graduated sanctions.

All customary land tenure systems described in chapter 2 display important features of robust common-pool resource management systems, including simple monitoring systems and conflict resolution mechanisms based on graduated sanction. In order to maintain and strengthen these local, decentralized resource management systems, it is the role of the state to (1) identify and register which land area belongs to which community or user group, (2) define and recognize the legal entity through which the community controls, regulates, receives, uses and distributes benefits, (3) develop and implement the necessary laws and policies, and (4) enforce the rights of the community, particularly towards outsiders. Rules for allocation of resources within the group should be based on the specific institutions of the community or user group.

¹² According to Foerster and Apel (2004), the gap between customary and statutory rights results from the different rationales for both rights. Customary tenure arrangements represent local solutions for sustainable land use and statutory rights are developed by states in consideration of complex national and international challenges.

The issue of whether or not the state should reserve the right to intervene in the 'tenorial shell' that is formed around communal land holdings depends on nature and characteristics of customary tenure institutions and their ability to provide tenure security as well as to ensure equitable and sustainable resource use under increasing internal and external pressure. Ankersen and Barnes (2002) for example argue that as community tenure systems come under increasing threat from many directions, inter-generational sustainability can only be ensured if communities improve their local land administration capabilities and maintain more detailed tenure information, including community cadastres.

Before we will present a detailed discussion on legal and policy implications of communal land registration in the Lao PDR, let us look at examples of neighbouring countries that have adopted communal rights to land and forest in their legislation.

IV. Experiences from Cambodia and Vietnam

Two of the neighboring countries of the Lao PDR recognize communal land rights in their national legislation. The governments of the Kingdom of Cambodia and the Socialist Republic of Vietnam have adopted provisions of long-term statutory land use rights of community groups, based on customary tenure systems. In the following we will explore history and background of the legislative reform in both countries, as well as the content and state of implementation of the legal framework. Valuable lessons can be drawn from communal land titling in Cambodia and Vietnam that can inform the process of recognizing communal land rights in Lao PDR.

4.1 History and Background

Cambodia

Whereas Cambodia's previous Land Law granted communal land property rights only to Buddhist monasteries, the new 2001 Land Law also recognizes communal ownership¹³ rights of indigenous minority communities¹⁴ to their lands. Almost six years later, however, not a single indigenous minority community has received title to its communal property.

This lack of implementation can be at least partly attributed to the history of the provisions. It has been argued that the impetus for inclusion of a chapter on communal property of indigenous minority communities in the Land Law came at the behest of international organizations. The provisions in the 2001 Cambodian Land Law are not so much based on the understanding of nature and importance of customary tenure systems but it is more appropriate to assume that the recognition of communal land rights of indigenous minority communities is the result of the important role international organizations and NGOs have played in the country's development agenda (Simbolon 2002). This is further supported by an inconsistent legal framework. The Forestry Law promulgated in 2002 contains little reference to communal rights granted to ethnic minority communities under the Land Law and provisions related to customary rights of local communities living in and near forests fall short of the intent and spirit of the Land Law.

Vietnam

The recognition of communal land rights in Vietnam's Land and Forest Law is the outcome of a process that started with an experimental forest devolution program, known as forest land allocation (FLA). Against the backdrop of rapid degradation of forest resources and high costs for forest protection born by the State, the role of local people in the management and protection of natural resources gained increasing recognition in Vietnam in the early 1990s. The enactment of the 1993 Land Law already signaled a shift from state-based centralized management of forests towards decentralization and devolution of forest management. Individual households were granted long-term use rights to forest land. However, under the 1993 Land Law communities were not eligible to receive titles and the allocated areas were mainly bare hills and protected forest land.

Experiences from forest land allocation, first piloted in Dak Lak and later also initiated in Son La province¹⁵, demonstrated that allocation of forest land use rights to communities were

¹³ The official English translation of the 2001 Land Law reads: "collective ownership". This has led to some confusion about the nature of indigenous communal tenure systems. In accordance with the definition provided earlier in this paper, we will refer to the stipulations of the Cambodian Land Law as "communal ownership".

¹⁴ We have chosen the term 'indigenous minority communities' as the closest English translation to the Khmer term used in the Land Law 'sahakhum chunchiet daum phek tek'.

¹⁵ The forest land allocation program officially started in Dak Lak province in 1999. For Son La province, a comprehensive forest land allocation program for the entire forest land of the province was initiated in 2001.

socially more acceptable and economically more viable than allocation to individual households. Despite the introduction of statutory policies and legislation, community based customary institutions have often still been ruling the use and allocation of forest resources (Thanh et al. 2003). For areas under customary management by communities, it seemed therefore more feasible to allocate forest land use rights to user groups or communities in order to encourage and strengthen traditional forest management practices.

Taking into account the results of the FLA pilot activities and recommendations of other national land reform programs, the new Land Law of 2003 recognizes village population communities as eligible land owners. However, it does not specifically mention communities as recipients of rights to forest land. This omission has partly been clarified by the revised Forest Law (2004), which clearly states conditions and processes for allocation, lists types of forests to be allocated and defines rights and obligations of village population communities. However, the Forest Law does not call for a formal title and there is still confusion if communities are entitled to receive land use or so-called 'red book' certificates to the allocated forest areas.

4.2 Legislative Framework

Cambodia

Unlike in Lao PDR and Vietnam, Cambodia's Constitution (1993) and Land Law (2001) recognize freehold land property tenure rights of individuals and legal entities, without all land in the country being held in trust by the government for the population (LL Chapter 1). Land property rights are secured through a system of registration and issuing of titles to ownership (LL Chapter 4).

Within provisions that define and provide for communal ownership¹⁶ (LL Chapter 3) there are provisions that specifically recognize communally owned land rights, what is referred to as the immovable properties of indigenous minority communities (LL Articles 23-28). The Law clearly defines an indigenous minority community in Article 23 as "a group of people who reside in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use." There are also clear provisions regarding how an individual is included within the community and provision for leaving the community if one so desires (LL Articles 24, 27).

The Law identifies lands which can fall under the collective ownership of an indigenous minority community as those areas that are used for residential purposes and lands used for agricultural production, with the agricultural lands not only limited to currently cultivated land but also lands that are in reserve for shifting cultivation purposes (Article 25). The community's collective ownership has all the rights recognized under private ownership, with the only defined limitation being that the community may not dispose of any land which could be considered as State Public Property to any person or group (Article 26).

The Forestry Law contains limited references to land property rights of indigenous minority communities which link directly to the provisions within the Land Law. Within these references is a definition of indigenous minority community land that simply refers back to the Land Law (definitions annex), recognition that forest concessions cannot interfere with "land property of indigenous minority communities" that have been registered with the State (FL Article 15), and that shifting cultivation may be practiced on lands of indigenous minority communities that have been registered with the State (FL Article 37).

¹⁶ Again, note that the official English translation reads "collective ownership" (see also previous footnote).

Separate from provisions directly referring to indigenous land property rights are provisions related to customary access and use rights of communities living in or near the forest, and provisions for community forestry (FL Chapter 9). These provisions can be effectively used by indigenous communities for areas of forest land they depend on, but they do not include rights to ownership.

Vietnam

Vietnam is similar to the Lao PDR in the sense that all land is effectively owned by the State, acting as the legal representative of the entire population (LL Article 5). Land property rights, defined in the 2003 Land Law as land use rights, can usually be acquired through land assignments of a specific duration which can then be renewed, with evidence of ownership of the land property right secured by registration and titling through the issuance of land use right certificates.

Article 9 of the Land Law defines who can be eligible for the issuance of land use right certificates, including individuals, households, organizations, religious establishments, and most importantly for this analysis, population communities. Population communities are defined to include communities of Vietnamese citizens “living in the same villages, hamlets or similar population quarters having the same customs and practices..., that are assigned land or have the land rights recognized by the State.” As defined in this article and clarified in Article 71, this includes various ethnic minority groups which traditionally hold land together in a communal form in accordance with custom and practice. Essentially, it is this recognition of population communities in the law that allows for communal titles to be recognized in Vietnam within its land management framework. In cases where a land property right is registered and titled to a population community in Vietnam, the land use right certificate will be issued in the name of the population community and handed to the lawful representative of such population community (LL Article 48).

In general, those who have a land use right certificate have the rights to exclude others from the land, benefit from the production of land as a result of Labour or investment, right to lease and mortgage the land, right to transfer the land to others, right to exchange, right to inherit, and the right to be compensated when the land is taken by the State for another purpose (LL Articles 42, 105, 106). As other land users, population communities enjoy rights of exclusion, usufruct and protection by the State¹⁷ but according to Article 117 of the Land Law, there is no right of exchange, transfer, lease, donation, mortgage or right to provide as guarantee.

There are limits on duration of land use right certificates issued to individuals and households based on the land classification within the Land Law (LL Article 67). There are provisions for renewing land use right certificates when they expire. According to Article 66 of the Land Law, population communities do not fall under the provisions for limited use duration found in Article 67, as land which would be assigned to them in a land use right certificate falls under the provisions for long-term stable use, which do not place any durational limits on the land property right. In practice, however, the 50 year duration for perennial-tree and production forests that apply to individuals and user groups are also imposed on population communities.

There are also limits on the amount of land that can be covered by a land use right certificate per individual or household, with a 3 ha limit for non tree agricultural production land, 10 ha limit for perennial tree land in delta areas, 30 ha limit for perennial tree land in mountainous areas, and 30 ha for protection and production forest lands (LL Article 70). It is not clear how the hectare limits contained in Article 70 would apply to population communities, as the

¹⁷ In addition, pilot communities in Dak Lak province are granted the special right to use up to 20 percent of the allocated forest area for agro-forestry purpose.

language only mentions individuals and households and there are no similar provisions within the Land Law which specifically apply to population communities.

It should be noted that for population communities that are using land with works being communal houses, temples, shrines, secluded huts, ancestral worshipping houses, etc., these areas can be included in their land use right certificate if application is made to have these included and the people's committees at the commune/ward/township level certify that the land is used commonly for the communities and is free from disputes (LL Article 50). Other than this provision, the Land Law seems to limit granting of land property rights for population communities to agricultural land, which by definition includes forest land (LL Articles 13, 71: subsection 4).

Provisions in the Law on Forest Protection and Development (2004) relating to assignment of forest land to population communities helps to clarify somewhat the provisions in the Land Law with regards to the areas of forest land that are eligible for the purpose of registering and titling through the issuance of land use certificates. Unfortunately, the provisions relating to village population communities¹⁸ are not well integrated with the rest of the provisions found in the Forestry Law.

Article 3 of the Forestry Law defines a village population community as "all households living in the same village, hamlet or equivalent unit". The only other mention of village population communities is in Articles 29-30, which are specifically dedicated to the assignment of forests to village population communities, including the rights and obligations of such communities once assignment is made.

Articles 29-30 bring the definition of village population community in line with the terminology found in the Land Law. They also clarify that areas of forest can be assigned to the village population community if application is made for assignment. Though forestland types which can be assigned, according to classifications in the Land and Forestry Law, are not specified, rather the areas eligible are described as being those areas already managed or used by the community and which are necessary for preserving the integrity of that community.

It should be understood that the provisions in the Land Law related to issuance of land right certificates control the provisions on the assignment of land to village population communities within the Forestry Law, and that the Land and Forestry Laws are read in conjunction with one another. As such, the assignment of forest land to village population communities should lead to the issuance and registration of a land right certificate, and therefore the village population community would fit within the definition of a "forest owner."

4.3 State of Implementation

Cambodia

Among other factors, the question of how indigenous communities can be incorporated in order to become legal entities has delayed the implementation of communal land titling in Cambodia. According to the Constitution and Article 8 of the Land Law (2001) "only natural persons or legal entities of Khmer nationality have the right to ownership of land in the Kingdom of Cambodia". Although the Land Law provides a definition of indigenous minority communities, it has been the dominant interpretation of policy makers in Cambodia that indigenous communities need to register as legal entities before being eligible to receive communal ownership titles to their lands.

¹⁸ The Forestry Law uses a slightly different terminology compared to the Land Law which may be the result of a translation error.

In 2003, a project was initiated by the Secretariat of the Council of Land Policy supported by the German Technical Cooperation (GTZ) to pilot the registration of communal land rights in three indigenous minority communities. Multi-stakeholder task forces were formed at the national and provincial level to direct the work of the project. So far two of the pilot communities have been officially recognized as legal entities by the Ministry of Interior on a case-by-case basis and the Ministry is currently developing general procedures and guidelines to streamline the process.

There has also been progress on the actual registration of communal lands of indigenous minority communities. In early 2007, the draft version of the policy on the registration of communal land rights of indigenous communities has been discussed in several public consultation workshops. The policy clarifies process, scope and ownership rights with regards to communal land registration. It has so far been unclear what types of land could be included in a communal title. Whereas the 2001 Land Law fails to explicitly mention forest areas as eligible land type to be registered as communal property of an indigenous minority community, the draft policy lists spirit and burial forests as the two forest categories to be part of the communal title. At the same time, the draft policy stipulates a maximum ceiling of 2 and 5 ha respectively. This has drawn a lot of criticism from representatives of indigenous minority communities.

After incorporating the comments from the consultations, the policy on the registration of communal land rights of indigenous communities is expected to be adopted by the Council of Land Policy in the second quarter of 2007. The policy will form the basis for necessary implementation guidelines, e.g. a sub-decree on communal land rights registration. Despite some progress in the legal and policy development, it is still uncertain when the first indigenous minority communities in Cambodia will receive communal titles to their lands.

Vietnam

The government of Vietnam recently announced that the pilot process of granting forest lands to communities, user groups and individual households will be extended to include 40 communes in 10 out of the country's 59 provinces, mainly located in the Northwest and the Central Highlands. This demonstrates the increasing acceptance of communal forest land allocation as a way to improve forest management and alleviate poverty of local communities.

Within the framework of pilot projects and endorsed by provincial governments, over 23,000 ha in Dak Lak province and 685,000 ha of forest land in Son La province have so far been allocated to communities, user groups and individual families. Originally, both pilot projects in Dak Lak and in Son La province were not intended for testing forest land allocation but for the implementation of community based forest management. It was quickly realized, however, that the goals of devolving forest management to local people can only be achieved by providing secure tenure rights. Furthermore, the initial allocation of barren and degraded forest land did not provide sufficient social and economic incentives for people to properly manage the forest resources. Mechanisms for benefit sharing were put in place as a step towards recognition of the rights of communities to harvest timber (see Box 9).

Box 9: Forest land management in Tali village

In 2006, the first pilot community organized the sale of timber from their communal production forest. Tali village in Ea Sol commune, Ea H'leo district, Dak Lak province, sold almost four hundred cubic meter of timber. The harvest volume is regulated in a five year forest management plan approved by the district level. The management plan has been developed in a participatory process with technical assistance from a GTZ project. Since people in Tali village belong to the Jarai ethnic group, all facilitation was done in the local language. Guidelines and techniques for forest management planning have been simplified to allow villagers to monitor and enforce forest management rules by themselves. Teams of Tali villagers undertake regular patrols and have been very successful in fighting illegal logging operations in their communal forests.

The current mechanisms for benefit sharing stipulated in Decision 178 promulgated by the Ministry of Agriculture and Rural Development in 2001 have proven too complex and technical to allow local community to manage their communal forests and need to be revised.

Income from timber sales is currently administered by the commune level since villages are not an administrative unit and are not recognized as legal entities in the Socialist Republic of Vietnam. Unlike Cambodia, this has not hindered the allocation of communal forest land to population communities, but the lack of a legal status makes it difficult for communities to enter into contractual agreements with third parties or open a bank account.

Since the promulgation of the Land Law (2003), communities in Dak Lak province have not received land use right certificates or 'red books' to their communal forest land. Instead communities were given the guarantee that they will be issued red books as soon as the legal situation has been clarified. The confusion about the legal interpretation of the regulations in the Land and Forestry Law can be partly attributed to a lack of coordination between concerned government departments. The Department of Agriculture and Rural Development (DARD) is the responsible agency for forest land allocation, but land use rights certificates are issued by the Department of Natural Resources and Environment (DoNRE).

The provincial government of Dak Lak has set an ambitious target to allocate 100,000 ha or about 15 percent of the total forest area to communities and user groups until 2010. The forest allocation program mainly targets ethnic minority communities but since 2005 land allocation plans also includes villages of Kinh people, Vietnam's majority ethnic group. Forest land will be allocated to communities, user groups and households depending on the request of the villagers. However, it is increasingly recognized that communities are in a better position to protect and sustainably manage communal forest areas.

4.4 Lessons Learned

Other lessons learned from communal land registration in the two countries can be summarized as follows.

Legal Framework

While the Cambodian Land Law sets out very clear and distinct provisions for the recognition and registration of communal land property rights, the Forestry Law does not contain any specific language with regards to how various areas of what otherwise is classified as forest land and can become registered and titled as communal land.

→ Inconsistency among laws has caused major problems during actual registration and titling of communal lands.

The other problem facing implementation of the provisions relating to indigenous lands is that the implementing rules and regulations related to this issue have not been enacted, such that

ethnic minority communities cannot be recognized as legal entities and clear procedures necessary for guiding the various government agencies involved are not in place.

→ The lack of a comprehensive strategy regarding communal land rights registration has continuously stalled the process of implementation.

While Vietnam has set up mechanisms in the Land and Forestry Law for the registration and titling of communal land property rights, the provisions are sometimes confusing and unclear, and there is poor linkage between the provisions in the two laws and provisions within the laws.

→ Any initiative in the Lao PDR to create similar mechanisms must ensure that there is better law harmonization between existing or amended laws, rules and regulations to ensure smooth implementation and avoid similar confusion.

Policy Issues

There is a general lack of understanding of the nature of customary tenure arrangements of ethnic minority communities among local and national government officials in Cambodia. There is also no agreement that communal title represents the most appropriate tenure solution for ethnic minority communities. This is partly due to the fact that Khmer communities are not eligible for communal title and therefore the system creates two different standards.

→ A clear and inclusive policy must be developed to guide the drafting of legislation related to communal titling. Furthermore broad political support and effective inter-agency cooperation is needed.

Implementation

On the implementation level, lessons can so far only be drawn from pilot registration in Vietnam since Cambodia has not yet issued a single communal title. Experiences in Dak Lak province have so far confirmed the following benefits of communal titling:

- Communal title is less costly than allocation of land to individuals
- Customary titling minimizes land conflicts and
- There is anecdotal evidence that communal allocation of natural forest land has positive impacts on the living standard of the community

In addition, the pilot efforts have led to the following recommendations:

- Field-level participation of local communities and unhurried planning and discussions are crucial to address the gap between customary and statutory rights
- Granted tenure rights to forest land must represent real incentives for communities to engage in protection and sustainable management of communal resources
- In case degraded forest areas are allocated follow up support is needed
- Benefit sharing mechanisms between users and the state need to be clear, transparent and practical, as well as flexible to allow for negotiations to reflect expectations on both sides

Keeping the lessons from Cambodia and Vietnam in mind, we will now look at policy and legal implications of communal land titling in Lao PDR.

V. Legal and Policy Implications of Communal Land Registration

The following is a brief overview of the current legislative and regulatory framework within the Lao PDR relevant to the issue of conducting registration and titling of communal land rights¹⁹, including an exploration of what land can be registered and titled for individuals/families and organizations in rural areas, what types of rights are granted through registration and titling of land property (tenure) rights, land classifications in the Land and Forestry Laws and other relevant regulations. Furthermore, the roles and duties of various authorities in relation to relevant land use issues are investigated, how customary access and use rights are currently recognized, what provisions exist for conflict resolution in relation to land registration and titling, and whether there is scope within the current framework to support the concept of communal land title based on provisions in the key legislation²⁰.

Based on the overview of the current legislative and regulatory framework, options are presented on what steps could be taken to support registration and titling of communal land rights, including suggestions on what types of communal arrangements could exist, and what procedures could be followed during the registration and titling process.

5.1 Explanation of Registration and Titling

For the purposes of this paper, it should be understood that registration and title convey a “land property right”, otherwise commonly referred to as a land tenure right. While all land in the Lao PDR is effectively owned by the state, held in trust as a national heritage (Const. Art. 17), land property rights can be acquired, with evidence of ownership of the land property right secured by registration and some form of titling (see 5.4 below for an explanation of the potential range of rights contained in a land property right as allowed in the current Land Law).

Land registration is a certification, or official recognition, of an existing land property right (LL Art. 43, MoF Reg. 996 Art. 2). The process of land registration involves entering relevant evidence and information about the land property rights into the official land parcel registration system.

There are various documents which provide evidence of the land property right, with formal land title being the highest form of evidence for a land property right (LL Art. 49). Formal land titles are issued after the detailed procedures found in Ministry of Finance (MoF) Regulations 997 and 998 on systematic and sporadic registration are followed. Other forms of evidence are also recognized, such as land survey certificates (PM Decree 101 Art. 13, MoF Reg. 996 Art. 4, etc.). Land survey certificates are used when some information is missing, such as when the parcel survey is simply not accurate enough, usually when formal systematic or sporadic registration procedures have not occurred according to MoF Regulations 997 and 998. Land survey certificates are commonly used in rural areas of the country, and can be used to recognize a traditional or custom-based land use right (a land property right claim based on customary use of an area of land) in accordance with Article 23 of PM Decree 101.

¹⁹ Note to Reader: The analysis is primarily based on an objective review of the language contained in relevant rules and regulations that were made available, not on actual implementation or interpretation in the field.

²⁰ See Appendix VII for a list of rules and regulations reviewed for this chapter

A land property right which has been properly registered and titled is different from the non-tenure land use rights, such as the customary access and use rights discussed in section 5.7 below. Land property rights convey more than just a right of accessing and using land, which in the non-tenure context is often strictly limited by law and regulation. With a land property right the owner has, at a minimum, the right to possess and exclude others from the land in question, can use the land for their personal benefit, and also has a very clear basis for compensation if the land property right is taken away from them.

Conclusion and Relevance to Communal Land Registration and Titling

The Lao P.D.R. already has a mechanism for registering and titling land property rights within the country. These rights provide greater tenure security than legislative and regulatory mechanisms for recognizing customary access and use rights of communities and individuals. It is within this existing framework that the concept of registering and titling communal land property rights must fit.

5.2 Recognizing Communities and User Groups for Communal Titling

In accordance with the Law on Local Administration (2003), villages are recognized as administrative units in Lao PDR. As with all state entities, land can be registered in the name of the local administration, so an area of land could potentially be registered and titled in the name of a village or a sub-entity within the village (e.g. Village Economic Committee or Village Forest Management Unit).

In some instances local government authorities, such as village authorities, may be granted areas of land for management and use for the benefit of residents within the government authorities' administrative boundaries. For example, Ministry of Agriculture and Forestry Regulation 535 (2001) on the management of village forests sets out the basic rules for how areas of forest lands which are within village boundaries are to be managed. Those forest lands are managed by the village authority for the benefit of the population, and they remain "state land" in the name of the state. The residents have access and use rights to these areas limited by rules and regulations (both local and national), but there is no land property right for resident individuals or organizations and it could not be transferred, leased, or inherited in any sense. In addition, there would be no compensation right if the land was lost since it is unlikely the state would compensate itself, though there could be compensation for loss of customary access and use rights (see section 5.7 for a detailed discussion on compensation for loss of traditional access and use rights).

Conclusion and Relevance to Communal Land Registration and Titling

Within the context of registration and titling of communal lands, the land property rights are greater than the rights involved in allocation of land to state authorities. It is therefore necessary to clearly distinguish between the administrative village unit and the resources use communities or group. The exact terminology for the concept of registering and titling communal land property rights cannot be found in current rules and regulations. However, it could be argued that the term "organization," which is found consistently throughout existing laws and regulations, could be interpreted to include the concept of communal land property rights.

In any case, there will need to be a clear definition of what a communal group is, and how membership is defined. A communal group could possibly be a sub-group within a village, such as a clan or user group that shares a traditional common identity. Or the communal group could be the entire population of a village, but not the village authority itself. Another option would be to have a communal group that encompasses more than one village.

The definition of communal group should be flexible enough to encompass a variety of situations as they exist in Lao PDR. This will ensure that any mechanism that is adopted to

support the concept of registration and titling of communal land property rights will reflect the actual needs and desires of the groups in question.

5.3 Types of Land for Registration and Titling

One of the key questions that arises when analyzing the issue of registering and titling communal land rights is what classifications of land can actually be allocated for such purposes. Let us first look at what land can be titled in rural areas within the current framework. According to the Land Law (2003), agricultural land used for cultivation and animal husbandry (Article 18), and forestry land (Article 22) are eligible. Specifically, these articles state that “individuals and organizations could have the right to apply to the land management authorities of the province...for issuing of land title for long term use right.” The Land Law is generally silent with regards to registering and titling (granting a land property right) for most other classifications of land listed in Article 11 (water area land, industrial land, communication land, cultural land, land for national defence and construction land), though Article 42 states that individuals and families (no mention of organizations) can be given the authorization for the long term use of construction land for an area not over eight hundred square meters.²¹ This provision is generally interpreted as meaning that residential lands for individuals and families can be registered and titled in accordance with the area restrictions. In addition, the Land Law does not differentiate between the different categories of forestry land, which is covered in the Forestry Law.

PM Decree 101 on the Implementation of the Land Law (2005) helps to clarify the question somewhat in the negative sense by stating that local administrative organizations and concerned competent authorities are not allowed to issue certificates for granting land property rights for protected forest land, preserved forest land, non-exploitable forest land, land in cultural area, historical sites and natural tourism places (Article 4). Classifications of forest lands are further explored in section 5.5 below.

The Forestry Law is quite explicit, stating in Article 13 that only degraded forest lands or defoliated lands (“degraded”) are eligible to be assigned to individuals and organizations for the purpose of granting a land property right (limit of 3 hectares per family Labour unit for individuals, limit for organizations based on actual production capacity), which would mean that the other forest land categories in the law (Protection, Reserve, Production and Rehabilitation) would not be eligible for allocation. Ministry of Agriculture and Forestry Instruction 822 (1996) on Land Forest Allocation for Management and Use essentially reiterates this directive, stating that degraded forest land for agriculture and tree planting should be allocated to families via temporary land use certificates, which is a limited form of land property right that can lead to registration and title (Article II). This same section of the Instruction states that lands within a village boundary that have forest cover shall be categorized as Protection Forest, Conservation Forest and Production Forest and allocated to the village to manage in the form of a Village Forest Management Agreement.

It is generally interpreted in the field that what is termed Production Forest in Instruction 822 is considered to be Village Use Forest. If these Village Use Forest areas could fit under the category of Degraded Forest in the Forestry Law, as opposed to Production Forest, then they could potentially be available for registration and titling of communal land rights. However, MAF Regulation 535 on the Management of Village Forests (2001) does not recognize that these areas could be registered and titled. On the contrary, it states that these areas are allocated to villages to manage for the purpose of customary use (Article 2). While there can be a property ownership right created in the growing stock (trees) when individuals or village

²¹ See discussion on ability of individuals and organizations to be allocated Water Area Lands for protection and use in section 5.4 below.

organizations plant and grow trees, there is no land property right recognized, only a land use right (Article 7).

Conclusion and Relevance to Communal Land Registration and Titling

Based on the above analysis, the only rural lands available in the current legislative framework for any kind of registration and titling are agricultural lands, degraded forest lands and construction lands for residential or housing purposes.

In terms of registration and titling of communal lands, this limits the areas that are actually available for such a purpose unless amendments are made to existing laws and regulations. It should be understood that the areas available for registration and titling in rural areas will be dependent upon how land is actually classified and zoned, or re-classified and zoned, during land use planning procedures. Technically, village use forest could be classified as degraded forest land in accordance with the Forestry Law. However, this does not reflect the realities in the villages and would therefore provide a rather weak legal basis for communal title to village use forests.

5.4 Types of Rights granted through Registration and Titling

The Land Law (Articles 53-58) identifies five rights contained within the land property right which is secured through registration and titling: Right to possess the land (possess with a view to use for specific purpose), right to use the land (right to use according to needs of the person with the land property right, subject to legal restrictions), right to usufruct from land (person with the land use right may seek rents through leasing or use the land property right as a share or guarantee, such as in a mortgage), right to transfer the land property right (give the right to another person by sale, offer or exchange), and the right to inherit the land use right (pass to others through inheritance to husband, wife, children, grandparents, parents or other close relatives).

It should be pointed out that existing rules and regulations contain provisions for compensation when there is a loss of a land property right. The Land Law (Article 71) states as follows: “when it is necessary to use the land of any individual or organization for public purposes, the State shall expropriate the land use right but shall appropriately compensate the losses to the owner of such expropriated land.”

Conclusion and Relevance to Communal Land Registration and Titling

It is not necessary to receive all five rights when registration and titling occur in the communal context. For the purposes of communal land titling, it is widely agreed that only a limited usufruct right be granted (lease for the purpose of seeking rents which benefit the entire group, but not use as share or guarantee which could lead to alienation of the land property right), that the right to transfer would not be granted to protect the integrity of the community, and that the right to inherit would simply not be applicable, since the community that is named in the title does not have relatives, rather only the rights of the individual community members are passed on within the community based on community tradition. Exactly what rights would be granted in a communal land property right needs further discussion and analysis, and is further explored in chapter 6 below.

Compensation for loss of a land property right that has been secured, which is not so much a right as an added protection that is provided by registration and titling, should be taken into consideration during any analysis of the pros and cons of communal titling. While there are clear provisions for granting compensation for loss of mere access and use rights (PM Decree 102, Articles 1,3 & 6, MAF Instruction 377, Article 5), the compensation rates and assurance of a clear method for calculating compensation (and thus assuring that fair compensation is actually forthcoming) is greater for registered and titled land property rights.

5. 5 Land and Forest Land Categories/Classifications

The Land Law (Chapter II) lists eight different categories of land,: *Agricultural Land* for cultivation, animal husbandry and research; *Forest Land* that is either covered by forest or determined by the State as prescribed in the Forestry Law; *Water Area Land* that is submerged or surrounded by water sources including wetlands; *Industrial Land*, which are land areas, or areas surrounding as determined by the State, for various industrial related activities; *Communication Land*, which is land for roads, bridges, various types of transmission lines, canals, airports, ports, etc.; *Cultural Land*, described as land for cultural heritage, including historical monuments, temples, natural landscapes, cultural buildings and other areas for cultural or tourist purposes; *National Defence and Security Land*, which includes all lands used for military or other related purposes; and *Construction Land*, which has been determined to be used for construction of residential places, buildings, workshops, factories, offices and public facilities.

The Forestry Law (Chapter II) creates five categories of Forest Land: *Protected Forests* that are primarily for protecting watersheds, preventing soil erosion, preventing natural disasters, etc.; *Forest Reserves* (also called *Conservation Forests*) for preserving biodiversity, areas of historical or cultural significance, education and research, etc.; *Production Forests* which are primarily for producing timber and non-timber forest products, including areas for peoples' regular and continual daily living needs; *Rehabilitation Forests*, which are areas of forest set aside for natural re-growth into mature forest; and *Degraded Forests*, which are areas of degraded or defoliated forest land to be used for reforestation activities such as plantation, or allocation to individuals and families for forestry related activities such as agro-forestry, livestock production, or other purposes.

Some confusion is created in terms of the classification or categories of forest lands within village boundaries, because MAF Instruction 822, which was enacted prior to the current Forestry Law, only makes mention of four categories (*Protection* for watershed purposes, *Reserve* or *Village Conservation Forests* for spirit or sacred areas and cemeteries, *Production*, and *Degraded* for the purpose of allocation or tree plantation). It is reported that different classifications are used at the village level during actual field interpretation and implementation than those found in either the Forest Law or MAF Instruction 822. Eventually the apparent and very real confusion caused by this already existing law harmonization issue needs to be rectified so that the process for forest land categorization within village boundaries is clear and aligns well with provisions in the Forestry Law.

Conclusion and Relevance to Communal Land Registration and Titling

The classification of land and categorization of forest land within village boundaries are relevant to the issue of communal titling since it provides the basis for what lands can be allocated, registered and titled, as discussed in section 5.3 above, but is also important for understanding that how lands are classified greatly affects how much land is available within village boundaries for such a purpose.

Certain areas which we found under communal management in the study villages are not available for the purposes of registering and titling a communal land property right based on the current legal framework. Clear examples are provided as follows:

Cultural Lands: A community spiritual centre, such as a temple, would not be available for registration and titling if it was classified as Cultural Land. Likewise, areas available for tourist activities, such as a waterfall, could be classified as Cultural Land and thus not be available for registration and titling.

Water Area Lands: In many locations, especially in lowland areas, water area lands such as naturally occurring fishing ponds, wetlands and periodically submerged river banks (utilized for agricultural production) are used and managed communally. However, there is no clear mechanism by which these lands can be registered and titled under current

provisions of the Law. The Land Law (Art. 25) does indicate that individuals and organizations may be allocated areas of Water Area Lands for “protection and use” only (limited rights compared to those described in section 5.3 above). It is not clear if this allocation could be in the form of registration and titling, thus securing a land property right, with only limited rights granted. Language in Article 4 of PM Decree 101 is not encouraging, stating that local administrative organizations and concerned competent authorities are not allowed to issue certificates for granting land property rights for land areas “along the sides of natural rivers and ponds...,” which would appear to prohibit the granting of a land property right for such Water Area Lands.

Forest Reserves: Within village boundaries, Forest Reserve areas are often considered to be Village Conservation Forests where communal spirit forests or cemeteries are located. Unfortunately there is no room within the Forestry Law to have areas classified as Forest Reserves allocated to individuals or organizations for the purpose of registration and titling. Under the current legal framework, only degraded forest lands can be allocated for registration and titling.

5.6 Amount of Land to be Registered and Titled

The amount of land that can be registered and titled, not only that which is potentially available based on various land and forest land classifications, but also how much land is permitted to be allocated for various activities, must be taken into account during an analysis of the potential benefits of communal registration and titling of land property rights.

There are limits on how much land can be allocated to individuals and families in current rules and regulations based on the land use that will take place: rice and farming is generally limited to one hectare per working person in the family, with industrial/annual crops, fruit orchards and grasslands for livestock limited to three hectares per working person in the family (LL Article 17); construction land for residential purposes limited to eight hundred square meters per person in the family (LL Article 42); degraded forest land for planting trees or rehabilitation is limited to three hectares per working person in a family (FL Article 13).

Conclusion and Relevance to Communal Land Registration and Titling

While there are strict limits on the amounts of land that can be allocated to individuals and families as indicated above, language in both the Land and Forestry Laws indicate that organizations can be allocated land for agricultural, forestry and residential purposes according to that organization’s ability to productively use and manage the land (LL Articles 17 & 42, FL Article 13). For the purposes of communal titling it might be beneficial if communities or user groups are considered to be organizations, since the amount of land allocated to communities or user groups would be based on the actual management capacity of the group. However, the manner in how an organization’s “ability to productively use and manage the land” is assessed would need to be thoroughly examined as the method for determining this is not clear in the existing law and regulation.

5.7 Recognition of Customary Use

Customary land tenure systems are already recognized in existing laws and regulations within the Lao PDR. Traditional and customary ways of accessing and using rural lands are supported in national legislation, but do not include land property rights as described in section 5.1. In addition to provisions for access and use, there is recognition of long term customary use of land for the purpose of providing evidence which could lead to the issuance of land survey certificates.

Recognition of customary access and use rights primarily applies to access and use of forest lands. The Forestry Law (Article 30) states that use of forest and forest land which has been traditionally practiced is recognized by society and law, and that this includes gathering wood for fences and fuel, gathering other forest products, hunting and fishing, etc., as long as the customary use does not damage the forest or forest resources. Article 28 allows for strictly limited and controlled harvesting of timber from village production forests for family consumption. MAF Instruction 377 (1996) on customary use of forest resources reiterates the provisions in the Forestry Law and adds further controls and clarifications on the customary use of forest resources, with the directive being clearly given that the village may further regulate the use. It should be understood that these customary access and use rights are actually quite limited and highly regulated, and do not convey any sort of land property or tenure right.

PM Decree 101 on the implementation of the Land Law does recognize long term customary occupation, development and use of land as being suitable as evidence for the issuance of land survey certificates, in conjunction with other evidence presented such as testimony from witnesses and the village head (Article 23). In addition, MoF Regulation 997 and 998 on systematic and sporadic registration states that long term use and occupation of land acquired through customary ways such as through inheritance, transfer or clearing and developing of the land can be recognized for the purpose of registration and titling as long as what is claimed is not State Land (997 Article 19/ 998 Article 23). These are the only provision where customary use and occupation may lead to a land property right, and it is limited by other provisions relating to the types and amounts of land that can be registered and titled as explained in the sections above. In addition, these provisions seem to only apply to individuals making a claim for ownership of a land property right, and make no mention of organizations being able to use this mechanism.

Conclusion and Relevance to Communal Land Registration and Titling

While the provisions in existing laws and regulations relating to customary access and use do not directly support the concept of registration and titling of communal land property rights, they do provide a basis for the argument that communal registration and titling represents a logical next step within the government's land management scheme. As customs and traditions are recognized and protected in the law, then there is an existing basis or precedent within the law upon which to recognize communal land registration and titling.

More important is the fact that recognized customary access and use rights only convey very limited rights to land (ability to access and use as limited by rules and regulations, with no additional rights granted), there is no land property right or tenure right as described in section 5.1, and the protection afforded to communal groups by the recognition of customary access and use is limited, and so is the incentive of the communities to sustainably manage the allocated land and forest areas.

5.8 Land Dispute Conflict Resolution Procedures

There are two types of land disputes identified in the Land Law, those of an executive character, and those of a civil character (Articles 80 & 81). Land disputes of an executive character include disputes between the land user and a concerned land authority, such as use of land without permission, use of land not in conformity with its intended purpose, non-payment of taxes, or other such regulatory violations. These disputes are handled administratively through mediation by the village administrative authority and other relevant agencies involved where the land is located. If the land user is not satisfied with the outcome of the mediation or agreement cannot be reached, then a request can be made for the district administrative authority to resolve the dispute. If once again the dispute cannot be resolved, then the parties involved have the right to submit the dispute to the court.

Land disputes of a civil character involve such conflicts as disagreements over inheritance, transfer of land rights, leases, or other disputes of a contractual nature. These types of disputes are to be submitted to the people's court in accordance with court procedures, and decisions appealed to a higher level if there is dissatisfaction with the outcome and a willingness to incur the costs of time and expense associated with such an action. It is most likely that there would be an informal mediation role often times played by the village chief and other village elders when there are contractual disputes, prior to submission of the conflict to the people's court.

It should be noted that MoF regulations 997 and 998 on systematic and sporadic registration state that the adjudication units which handle the registration process have the right to participate in any arbitration or mediation proceedings when there is an objection made to a land property right claim or dispute with regards to the boundaries of a parcel (997 Article 16, 998 Article 20). In addition, these regulations call for the formation of a Committee for Resolving Problems of Issuing Land Titles by the director of the finance division of the province, but with the creation of the new NLMA this responsibility most likely now resides with the director of the provincial land management agency.

Conclusion and Relevance to Communal Land Registration and Titling

While there exists in current law and regulation conflict resolution procedures for various disputes related to land, including disputes that may arise during land registration and titling processes, these may not be adequate for handling disputes that are unique in the context of communal land title. A more thorough analysis of what types of disputes arise within the communally owned land is needed to feed into development of policies and law supporting the concept of communal land. This analysis should include an examination of how different ethnic groups within the Lao PDR traditionally manage land disputes.

5.9 Can Communal Land Title be recognized in the current Framework?

The Constitution (Revised 2003) recognizes "collective" property rights (Article 16) and also property rights in relation to land for individuals and organizations (Article 17). The Land Law and PM Decree 101 on implementation of the Land Law, while making no mention of collective ownership of land property rights, clearly state that land property rights can be acquired by individuals, families and organizations (LL Article 3, PM Decree 101 Article 2). The Forestry Law, in relation to areas of degraded forest that can be allocated for the purpose of land property rights, does not use the term collective but rather refers to individuals and organizations (FL Article 5,7,8,13, Part IV, etc.). MoF Regulations 996, 997 and 998 on systematic and sporadic registration utilizes the same "individual and organization" terminology found above (Article 3 within each respective regulation). Nowhere in current law and regulation is the term "communal" used in relation to registration and titling of land property rights.

While the exact terminology for the concept of registering and titling communal land property rights may not be found in current rules and regulations, it can be argued that the term "organization," which is found consistently throughout existing laws and regulations, could be interpreted to include the concept of communal land property rights. Specific decrees and regulations would have to be developed that clarify how the registration, titling and management of communal land property rights can be enacted while utilizing existing registration and titling processes, procedures and institutional arrangements wherever appropriate. This is one possible option that is discussed in more detail in section 5.10. In this way a long and difficult process of amending the Land and Forestry Laws to include very specific language with regards to communal land property rights, not to mention the myriad of implementing regulations, can be avoided.

It should be understood by the reader that the word in Lao that corresponds with the term “organization” is not a great fit with regards to supporting this interpretation, but a government policy which clearly states that the term organization includes the concept of customary communal groups can take care of this.

Conclusion and Relevance to Communal Land Registration and Titling

The language in existing law and regulation does not clearly support the concept of registering and titling communal land property rights. While a specific interpretation of “organization” may provide an option for recognizing this concept, there would still need to be the development of a clear policy framework which supports it, including the development of relevant regulations and guidelines. Another option would be to amend the existing Land and Forestry Law to contain specific provisions for recognizing and supporting the concept of registering and titling communal land property rights.

5.10 Options for Supporting Communal Land Title

There are two primary options for recognizing the concept of registering and titling communal land property rights. The first option involves broadly interpreting the term “organizations” as found in existing laws and regulations to include communities and user groups. The second option involves amending the Land and Forestry Laws to contain specific provisions allowing for registration and titling communal land property rights.

Option 1: As mentioned above, in order to support the concept of registering and titling of communal land property rights, there could be an interpretation of the term “organizations” as found in existing laws and regulations to include customary communal arrangements.

Advantages to Option 1	Disadvantages to Option 1
No need to amend the Land Law, Forestry Law and a myriad of related existing rules and regulations, which would save time and avoid possible law harmonization problems.	This option would not address the issue that only degraded forest land can be allocated to individuals and organizations with the Land and Forestry Laws as currently written. As such, many areas of forest land, as well as cultural and partly construction land would simply not be available for registration and titling of communal property.
The term “organizations” is found throughout existing laws and regulations related to registration and titling of land property rights.	There is a strong argument that without amending the Land Law, there will not be enough recognized legislative authority for supporting the registration and titling of communal land property rights.
The term “organization” is not currently defined in existing laws and regulations, so there is a good opportunity to create an interpretation that includes customary communal groups. It has been reported that there are already plans to define the term “organization” in a separate regulatory document as requested by the National Assembly.	The term “organization” in the Lao language is not commonly considered to cover communal arrangements, which may cause confusion.

The logical steps that should be taken for Option 1 and arguments made are as follows:

- 1) Present a clear argument on why there should be registration and titling of communal land property rights. Show the clear benefits, and explain that since customary ways of using and managing land are already recognized and protected, this customary tradition should likewise be recognized by allowing for the registration and titling of

communal land property rights, thus providing greater tenure security and benefits than is afforded by customary access and use rights.

- 2) Explain that there is already a mechanism in the law by which this can be accomplished through simply interpreting the existing “organization” language to include communal groups (the definition of communal group and the size of the group should be flexible as discussed in section 5.2).
- 3) Once there is broad government buy-in and ownership of the concept, draft and adopt a government policy document on registration and titling of communal land property rights, including a statement that the meaning of “organization” includes communal groups. This policy document will be used to assist in the drafting and implementation of a Prime Ministerial Decree, NLMA Regulations and NLMA Guidelines on registration and titling of communal land property rights.
- 4) NLMA, in coordination with other sector agency stakeholders, drafts and submits for enactment a Prime Ministerial Decree on registration, titling and management of communal land property rights which clearly outlines the rules, procedures and responsibilities of various entities for implementing the Decree. It is within this Decree that the interpretation of the word “organization” is formally interpreted as including communal groups for the purpose of registration and titling of communal land property rights. Communal group would also be defined in this Decree.
- 5) NLMA, in coordination with other sector agencies and stakeholders, drafts and enacts a detailed regulation that adds detail and clarification to the PM Decree.
- 6) NLMA, in coordination with other sector agencies and stakeholders, drafts and enacts detailed guidelines for field implementation of the PM Decree and NLMA Regulation on registration and titling of communal land title.

Option 2: This option would involve amending relevant provisions in both the Land Law and the Forestry Law to include specific provisions supporting the concept of registering and titling communal land property rights. In addition to amending these laws, there would also need to be amendment of relevant subsidiary regulations and guidelines to match the new language in the Land and Forestry Laws after amendment.

Advantages to Option 2	Disadvantages to Option 2
Clear language and provisions in both the Land and Forestry Laws which would support the concept of registration and titling of communal land property rights.	Lack of political will to amend the Land Law and Forestry Law, as both of these laws were relatively recently amended.
Ability to amend provisions within the Land and Forestry Law to clearly show what lands are specifically available for registering and titling communal land property rights. The Forestry Law could be amended to provide for more than just degraded forest lands for registration and titling. As such, village use forests, lands for spirit forest of cemeteries, etc., could be clearly available for registration and titling for communal purposes.	The process involved for amending both the Forestry and Land Laws would be very time consuming, and there is no guarantee that the amendments would be passed by the National Assembly as desired.
Provisions within Law have greater recognized authority than lower level decrees and regulations.	The Land Law, Forestry Law and all existing relevant regulations would have to be amended. If the amendment process is not managed properly, there could be problems with regards to law harmonization that could cause confusion during implementation.

The logical steps that should be taken for Option 2 and arguments made are as follows:

- 1) Same as step 1 for Option 1.
- 2) Explain that there would need to be amendment of the Land Law, Forestry Law and all relevant existing rules and regulations.

- 3) Once there is broad government buy-in and ownership of the concept, draft and adopt a government policy document on registration and titling of communal land property rights. Law harmonization issues should be clearly addressed here, as this policy document will be used to assist in the drafting and implementation of amendments to the Land and Forestry Laws, amendments to already existing relevant regulations, drafting and implementation of a Prime Ministerial Decree, NLMA Regulations and NLMA Guidelines on registration and titling of communal land property rights.
- 4) NLMA and MAF, in coordination with other sector agencies and stakeholders, draft proposed amendments to the Land and Forestry Laws and submit to the National Assembly for consideration and enactment. Land Law amendments should clearly define communal group.
- 5) Once amendments to the Land and Forestry Laws are made, amendments to all relevant existing rules and regulations must also be made to ensure proper law harmonization to avoid confusion during implementation. NLMA and MAF would take the lead on this effort.
- 6) NLMA, in coordination with other sector agency stakeholders, drafts and submits for enactment a Prime Ministerial Decree on registration, titling and management of communal land property rights which clearly outlines the rules, procedures and responsibilities of various entities for implementing the Decree. NLMA, in coordination with other sector agencies and stakeholders, drafts and enacts a detailed regulation that adds detail and clarification to the PM Decree.
- 7) NLMA, in coordination with other sector agencies and stakeholders, drafts and enacts detailed guidelines for field implementation of the PM Decree and NLMA Regulation on registration and titling of communal land title.

VI. Summary of Recommendations and next Steps

Current trends and patterns indicate that despite their crucial importance commonly held lands are increasingly converted to other uses including industrial, agricultural and tree plantation. Although further research is needed to better understand extent and underlying factors of this land use change²², it is obvious from this study that land titling projects in Lao PDR need to include the registration of communal lands in order to stop the loss of invaluable property. For the rural areas this requires a rethinking of priorities for land registration. Instead of focusing on the registration of individual land holdings it is important to understand and recognize customary tenure systems that support both communal and individual use of land and natural resources.

In the following we will summaries options and issues to be considered for the legal recognition of customary tenure systems and communal titling in order to ensure tenure security for the equitable and sustainable use of land by rural communities in Lao PDR.

6.1 Nature and Content of Communal Title

We will present our recommendations related to the nature and content of communal title by answering the following three questions:

- How can communal lands be defined?
- What types of rights should be granted to communities and user groups?
- Who is eligible to receive communal title?

6.1.1 Identification of Communal Lands

Based on the results of our field survey we have identified upland areas, grazing land and village use and sacred forests as most important communal domains governed by local customary rules and regulations. The examples of the study villages have also shown that a diversity of tenure arrangements exists and management systems continue to evolve. The identification of communal lands therefore has to be based on the factual situation as asserted by the community or user group and, most importantly, in agreement with their neighbours. Since land use planning activities often focus on the village level there is a danger to neglect collective tenure arrangements that involve several village communities. The definition of communal lands therefore requires a flexible participatory process. As a very general guideline, communal lands could be defined as all those lands within village territories that are not individually claimed and to which communal management rules exist. The local management system should be analyzed and assessed for its robustness as well as its ability to provide tenure security and equitable access rights to group members.

6.1.2 Types of Rights granted through Communal Titling

Out of the five rights defined in the Land Law the rights to protect and use the land as well as limited usufruct rights should be granted to communities and user groups. The right to transfer would not be granted in accordance with local customs²³ and to protect the integrity of the community. Rights to inherit are not applicable since the standard procedure for succession of private title would not be necessary in communal title since it is held by a community or group entity in perpetuity.

²² The study team is aware of at least one research project conducted by NAFRI that looks at patterns and factors of land use change.

²³ The findings from our field survey show that local communities in the Lao PDR do not traditionally recognize the concept of sale or transfer of communal lands in perpetuity.

The right of usufruct should be limited to lease for the purpose of seeking rents which benefit the entire group, but not use as share or guarantee which could lead to alienation of the land property right. However, experiences from China demonstrate that leasing out collective forest and shifting cultivation fields to private persons, enterprises and local villagers for economic purposes has led to accelerated deforestation and conversion of communal lands into cash crop plantations in parts of the country (Foerster and Apel 2004). In order to avoid a similar development in Lao PDR but to allow for a certain degree of flexibility in the use of communal lands, area ceilings could be agreed upon and land leases would need to be approved by district authorities.

In addition to the right to protect, the right to use and limited right of usufruct, communal title should also include the right to re-categorize the land use purpose. This reflects the land use reality of integrated agro-forestry systems practiced by a majority of rural villages and allows communities to re-connect forest and agricultural lands that are often artificially divided by land use planning and zoning. However, the option of re-categorization could lead to reduction in forest cover since local users are likely to prioritize economic objectives over environmentally favourable options. In order to attain environmental along with social, cultural and economic objectives, location and ceiling of the area for re-categorization should be clearly defined.

Finally, legal mechanisms are needed to allow for the permanent allocation of use rights on communal lands to individual households. Tenure individualization is an ongoing process and it is widely recognized that if communal arrangements fail to respond to this challenge it might lead to informal land markets and illegal land transactions. However, this deceptively easy recommendation raises a number of questions, in particular, whether the community or user group itself should agree to the individualization, and if so, what should be an appropriate process to reach such an agreement. Concluding from our field study, local customary systems seem to pose no major obstacles to the individualization of land property rights. However, further studies are needed to better understand mechanisms of permanent allocation of individual land use rights and circumstances under which individualization fails to occur.

6.1.3 Recognition of Communities and User Groups

Communities and groups eligible for communal title, as well as their legal representation need to be defined and recognized in statutory law.

The definition of communal groups should be flexible enough to encompass a variety of situations as they exist in Lao PDR. A communal group could possibly be a sub-group within a village, such as a clan or user group that shares a traditional common identity. Or the communal group could be the entire population of a village. Another option would be to have a communal group that encompasses more than one village. Examples for legal definitions of communities eligible for communal title can be found in the land laws of Cambodia and Vietnam. Based on a rather simple definition, Vietnam has successfully allocated forest land to communities and user groups (see chapter 4 above).

Options to legally recognize communities and user groups range from a minimalist approach with no definition of boundaries to the incorporation of communities and groups as formal legal entities. Another common approach takes the form of identifying agents or trustees to hold legal title on behalf of their customary groups. There are advantages and disadvantages to all three options. Common to the agency methods are well-known risks of internal abuses of power and elite capture. Although forming an incorporated legal entity can reduce agency risks, the process of ascertaining the necessary information can cause greater conflict among the group and entail greater expense than justified by any potential benefits.

For the purpose of communal land titling at the village level, we recommend the registration of communal lands in the name of the village and the formal recognition of group internal

mechanisms for the definition of membership. As experiences from Vietnam show this suffices to allocate protection and use rights to local communities. In case dealings with outsiders become increasingly important, communities can in a second step incorporate as formal legal entities by preparing written constitutions that set out rules for membership, the mandate and nature of its representative body, internal mechanisms for dispute resolution and the way in which the corporation acts and those acts are evidenced.

The communal title issued in the name of the village community should be administered by a committee that is democratically elected to provide for additional checks and balances. This said, communal land titling should not contribute to the proliferation of village committees. As an extreme example, Ban Nathong in Savannakhet province has so far already formed 15 different administrative village committees. It is therefore recommended to review mandate, power and structure of existing committees for their potential to administer communal land titles.

For user groups, the names of all members should appear on the title and any changes should be reported to the district authorities. In the case of titling to user groups as sub-sets of village communities, the groups should obtain the consent of the wider community.

6.2 Legal and Policy Development with regards to Communal Land Titling

In chapter 5, we have outlined the necessary formal steps to develop the legal and policy framework to support communal land titling in the Lao PDR. In order to arrive at a decision if the term “organization” in the current legislation could be defined to represent communities and communal user groups (option 1) or if amendments to the Land and Forestry Laws are necessary (option 2), there should be an open multi-stakeholder policy debate informed by results from pilots testing the registration of communal lands.

6.2.1 Piloting Communal Land Registration

The study team recommends the prompt initiation of pilot activities to test communal land titling in the field. The pilots should start with the assumptions of option 1 and define communities and user groups as “organizations” in accordance with the Land and Forestry Laws. Policy discussion and piloting activities should provide answers to the following questions:

- Are amendments to the Land and Forestry laws necessary or does a Prime Ministerial Decree provide sufficient legal support for communal land titling in Lao PDR?
- What should be the role of the state? To what extent should the state regulate dealings between communities and outsiders? Should the state intervene in matters internal to the group?
- What are suitable legal mechanisms for the formal recognition of traditional authorities and institutions including traditional conflict resolution structures?
- Is there an appropriate process by which the rights of group members can be adjusted to changed circumstances?
- What are the costs of communal land titling?
- Does communal land titling lead to changes in the land use and management system of communities?
- What changes to the social structure of the community and user groups can be observed as a result of communal land titling?
- What kind of follow up support is needed including monitoring, evaluation, enforcement and incentives for sustainable management after communal land allocation?

It is recommended to incorporate different disciplinary perspectives in the pilot activities including anthropological techniques for analyzing changes in the traditional customary systems. We therefore recommend a close cooperation with the Faculty of Social Science at the National University of Laos.

Pilot activities should reflect the variety of communal land tenure arrangements found in Lao PDR and should therefore test communal land registration at the village level and allocation of communal lands to user groups. Initially, pilot activities should focus on communities and communal groups with well-functioning communal management systems. The absence of disputes and conflicts could serve as an indicator to help with the selection of suitable communities. There should also be a strong demand on the side of the selected pilot communities and user groups for communal land registration.

In a second step, communities that experience different kinds of internal and external pressure on their communal property should form an additional group for pilot testing of communal land registration.

6.2.2 Inter-agency Cooperation

Communal land registration requires the understanding and cooperation of all relevant government agencies at the national, provincial and district level²⁴. Experiences from Cambodia and Vietnam have demonstrated how the lack of inter-agency cooperation creates legal confusion, delays and in-efficiencies in the registration of communal lands.

In Lao PDR, the Ministry of Agriculture and Forestry (MAF) and its departments on the provincial and district level are responsible for land use planning. Land registration and issuing of titles or land survey certificates is the mandate of the newly formed NLMA and land authorities at provincial and district level. We observed during our field study that there was little dialogue between the two government agencies at provincial and district level. In order for communal titling to be successful, the concept needs the support of the NLMA and the MAF, as well as other relevant ministries. Within the framework of pilot activities it is therefore recommended to establish inter-governmental working groups at the national, provincial and district level to clarify responsibilities and roles, as well as define terms of cooperation between government agencies in relation to the titling of communal land.

6.3 Implementation of Communal Land Titling

Wherever possible mechanisms, government structures, personnel and procedures for registration of communal land property rights should be used that already exist for the registration of other forms of land property rights. In other words, it is not necessary to reinvent the wheel to register communal lands.

For piloting the titling procedures sporadic land registration can be used but full scale implementation should be based on a systematic land titling program. As mentioned above, asymmetries in information and bargaining power could lead to situations where some communities are disadvantaged compared to better connected communities that are faster in staking their claims. Approaching communal land registration in a systematic way could somewhat mitigate these risks and avoid inter-community conflicts. It also allows for identification and registration of communal tenure arrangements beyond the village level (e.g. by working in village clusters).

In the process of identification and demarcation of communal lands, improved land use planning procedures should be used or existing land use plans should be carefully reviewed.

²⁴ See Appendix 6 for a chart outlining the roles and duties of key government ministries and agencies that are involved with issues surrounding the concept of communal land titling.

It is therefore important to link communal land registration to the ongoing discussion on the reform of land use planning approaches and programs.

Once legal procedures for the registration of communal lands are in place the following steps towards full scale implementation of communal land titling should be taken:

- Identification of priority areas for communal land registration, following a similar logic as the one for individual land titling: communal land titling programs should focus on rural areas with high demand for tenure security due to an increase in land value fuelled by investment options
- Securing of financial support for communal land titling program: this will most likely involve large donor organizations
- Review of international options for project designs in communal land registration
- Investment in capacity building of local staff and technical equipment of implementing agencies: experiences from LUP/LA have shown that success or failure largely depend on the skills, knowledge and attitude of the government staff implementing the program
- Setting up of mechanisms for participation and local conflict resolution

It is important to remember that recognition of communal land rights in statutory law is just one factor in securing communal tenure arrangements. Follow up support including monitoring systems, effective enforcement of management plans and appropriate incentives need to be in place to attain overall land use objectives of productive, equitable and sustainable use of communal lands.

6.4 Closing the Knowledge Gap: Further Research and Studies

Due to time constraints, the study team could not sufficiently analyze the effects of resettlements and village mergers on communal land use systems and further research is needed. In addition, we recommend further studies on:

- Tenure arrangement and management systems of different kinds of economic user groups (livestock and NTFP)
- Linkages between communal land registration and community based forest management
- Traditional leadership structures and customary conflict resolution among different ethnic groups
- Types and underlying factors of internal, inter-community and community-outsider land disputes
- Responses of communities to increasing pressure on communal resources
- Options and strategies for improved land use and management of communal lands

With regards to some of the listed topics, a first step has been taken with this study but more research is needed to better understand the nature and dynamics of traditional communal land tenure and management systems.

Literature Reference

ADB (2001): Participatory Poverty Assessment in the Lao PDR. Manila: Asia Development Bank.

ADB (2006): Initial Environmental Examination. Lao PDR: Participatory Livestock Development Project. Project number 35297.

Alden Wily, L. (2005): The Commons and Customary Law in Modern Times: Rethinking the Orthodoxies. Presented at UNDP-International Land Coalition Workshop: "Land Rights for African Development: From Knowledge to Action", Nairobi, Kenya, October 31-November 3, 2005.

Angelsen, A. and Wunder, S. (2003): Exploring the Forest-Poverty Link: Key Concepts, Issues and Research Implications. CIFOR Occasional Paper No. 40. Bogor: Center for International Forestry Research.

Ankersen, T. and Barnes, G. (2002): Inside the Polygon: Emerging Community Tenure Systems and Forest Resource Extraction. Retrieved from <http://www.law.ufl.edu/conservation/pdf/extraction.PDF> on September 20, 2005.

Braeutigam, D. (2003): Community Based Forest Management in Cambodia and Laos: Frame Conditions. Selected Examples and Implications. Phnom Penh: MRC-GTZ Cooperation Programme; Agriculture, Irrigation and Forestry Programme; Watershed Management Component.

Bromley, D. W. (1992): The Commons, Property, and Common-Property Regimes. In Bromley, D.W (ed.): Making the Commons Work - Theory, Practice and Policy, pp. 3-16. San Francisco: Institute for Contemporary Studies.

Chiangthong, J. (2003): The Politics of Ethnicity, Indigenous Culture and Knowledge in Thailand, Vietnam and Lao PDR. In: Kaosa-Ard, M. and Dore, J. (eds.): Social Challenges for the Mekong Region. Chiang Mai: Social Research Institute.

Evrard, O. (2003): Land Allocation and Land Titling in Laos: Notes on implementation and social impacts. Report of the Food and Agriculture Organization (FAO). Vientiane.

Foerster, E. and Apel, U. (2004): Vietnam Customary Land Tenure Study. Report to World Bank, Hanoi.

FAO (2002): Non-Wood Forest Products in 15 Countries of Tropical Asia: An Overview. Edited by Vantomme, P. et al. EC-FAO Partnership Programme. Bangkok, Thailand.

Fitzpatrick, D. (2005): 'Best Practice' Options for the Legal Recognition of Customary Tenure. Development and Change 36(3): 449-475.

Foppes, J. (2003): The Role of Non-Timber Forest Products in Community Based Natural Resources Management in Lao PDR. Paper presented for the Regional Workshop on Community-Based Natural resources management, Bhutan, 4-7 November, 2003.

Fujita, Y. et al. (2006 Draft): Newly emerging issues relating to land tenure among different ethnic communities in Phonhong (Lak 52) and Khamkheut District (Lak 20). Vientiane: Faculty of Forestry at the National University of Laos.

Gibbs, C.J.N. and Bromley, D.W. (1989): Institutional Arrangements for Management of Rural Resources: Common-Property Regimes. In: Berkes, F. (ed.): Common Property Resources. Ecology and Community-based Sustainable Development. London: Belhaven Press, pp. 22-32.

Hirsch, P., Khamla Phanvilay and Kaneungnit Tubtim (1999): Nam Ngum, Lao PDR: Community-based natural resource management and conflicts over watershed resource. In: Buckles (ed.): Cultivating Peace: Conflict and Collaboration in Natural Resource Management. Ottawa: International Development Research Centre (IDRC).

Holleman J.F. (1986): Trouble-cases and trouble-less cases in the study of customary law and legal reform. In: Benda-Beckmann, K. and Strijbosch, F. (eds.): Anthropology of Law in the Netherlands. The Netherlands: Foris Publication, pp.110-131.

Kirk, M. (1996): Land Tenure Development and Divestiture in Lao PDR. In: Guiding Principles: Land Tenure in Development Cooperation. Eschborn: German Technical Cooperation (GTZ).

Lao Consulting Group (2002): Existing Land Tenure and Forest Lands Study. P080-LTP Study Report10. Vientiane.

Lao National Front (2005): Ethnic Groups of Lao PDR. Vientiane: Ethnic Department. Lao Front for National Construction.

Moizo, B. (2004): Land allocation and titling in Lao PRD: Origins, problems and local impacts on minority groups. Paper presented at the International Conference on "Impact of Globalisation, regionalism and nationalism on Minority Peoples in Southeast Asia", Chiang Mai, Thailand, November 15-17, 2004.

Maxwell, D. and K. Wiebe (1999): Land Tenure and Food Security: Exploring Dynamic Linkage. Development and Change **30**: 825-849.

Native Title Report (2003). Aboriginal and Torres Strait Islander Social Justice Commissioner. Retrieved from <http://www.humanrights.gov.au> on December 20, 2006.

Oakerson R.J. (1992): Analyzing the Commons: A Framework. In: Bromley D.W. (ed.) Making the Commons Work: Theory, Practice, and Policy. California: Institute for Contemporary Studies, pp. 41-59.

Ostrom, E. (1990): Governing the Commons: Evolution of Institutions for Collective Action. New York: Cambridge University Press.

Poffenberger, M. (2006): Forest Sector Review of Northeast India. Background Paper No. 12. California: Community Forestry International.

Poynton, S. (2006): How people suffer when Journalists get it wrong: A comment on the quality of recent NGO reporting on Laos Village Forestry. Switzerland: Tropical Forest Trust. Retrieved from <http://www.tropicalforesttrust.com> on 15.11.2006.

Schlager, E. and Ostrom, E. (1992): Property rights regimes and natural resources: a conceptual analysis. Land Economics **68**: 249-262.

Schoonmaker Freudenberger, K. (1994): Tree and land tenure: rapid appraisal tools. Rome: FAO.

Simbolon, I. (2002): Access to Land of Highland Indigenous Minorities: The Case of Plural Property Rights in Cambodia. Working Paper No. 42. Halle: Max Planck Institute for Social Anthropology.

Simana, S. (undated): Kmhmu' livelihood: Farming the forest. Institute of Cultural Research, Ministry of Information and Culture. Translation by Preisig, E. (1997). Vientiane.

Sjaastad, E. and Bromley, D.W. (1996): Indigenous Rights in Africa: Appropriation Security and Investment Demand. Agricultural Economics Staff Paper Series No. 391. University of Wisconsin-Madison.

Thanh, Tran Nong, Quang, Tan Nguyen and Sikor, T. (2003): The Local Outcomes of Forest Land Allocation: Evidence from Dak Lak. Dak Lak: Department of Agriculture and Rural Development.

World Bank (2003): Land Policies for Growth and Poverty Reduction. Washington, D.C.: The World Bank.

Appendix I: Terms of Reference

TERMS OF REFERENCE

for a

Study on Collective Land Titling and Community Ownership

Background

The amended Land Law (2003) and the implementation guidelines to the Law distinguish areas falling under individual land use rights and state land units. There are currently no provisions in the law on community ownership or collective titling. On the other hand, there is a recognition of customary land use rights e.g. under the Forestry Law and several forestry-related Decrees as well as in MD 997/MoF (Art. 19/Para 1.3), which acknowledges individual land use rights based on customary ways. In rural areas of Lao PDR and across all ethnic groups and local communities there are zones under traditional communal management. With increasing pressure on land and a growing influx of foreign investors preparing for plantation or exploitation projects, there is an urgent need to investigate various options of securing community ownership of land and providing collective titles.

Objective

The objective of this policy reform proposal is to identify land use areas currently under communal management, explore the need to recognize community ownership of land and recommend appropriate legal mechanisms to do so. While communities have traditional control over their land resources there is no formal recognition of this authority. Land titling is to individuals or to the state instead of in the name of the village, user groups or customary organizations. Yet, as community mapping programs and the clear delineation of village boundaries progress, communities will wish to develop a greater management role for their land resources while at the same time develop mechanisms for the utilization of common property resources shared with neighbouring communities. These decisions will include issues related to customary tenure systems, access to land and other resources, and the allocation of those resources to community members and the ability to restrict access by outsiders. Formal recognition of community ownership of land may promote better, more sustainable land use, greater levels of investment, and fewer disputes with neighbouring villages over land resources.

Furthermore, in the absence of titling options to the community, all common property resources are currently titled as state land units in the areas of systematic adjudication under the Land Titling Project II (GoL, World Bank, AusAID, GTZ). This potentially puts rural communities at risk of losing control over their customary use areas, such as grazing areas, use forest areas, NTFP collection areas etc. to investors applying for state land leases and concessions.

Methodology

The study would review existing literature, project reports, studies and legislation related to community ownership and customary land use rights in Lao PDR. The study team will conduct meetings and interviews with representatives of all relevant institutions, such as the National Land Management Agency (NLMA), the Department of Lands (DoL), the Ministry of Agriculture and Forestry (MAF), the Ministry of Justice, the Ethnic Department under the Lao Front for National Reconstruction, the Lao Women's Union, Donors, Development Partners, NGOs etc.

The study team will investigate the current state of village mapping under the land use planning procedures carried out by MAF and the current titling procedures for common property land and communal land units under LTP II, which are carried out by the Provincial Land Offices and Systematic Adjudication Teams (SATs).

The team will travel to selected field sites in at least 3 provinces to gain a better understanding of common property resources, traditional resource use and community organization in various ethnic groups (Lao, Hmong, Khammu, Lue, Akha, Phuan and others). The study team will conduct mainly qualitative appraisals (possibly applying the “common-pool resource theory”) and could apply standardized guidelines for semi-structured interviews to be conducted in the villages. In the 3 provinces, at least 20 villages should be visited to get an understanding of the variety of community ownership of land in the country.

One important aspect for selecting villages to be visited is whether these communities have undergone resettlement or merging in the recent past or have become host villages to others. In Lao PDR massive migrations have been taking place over the last decades due to war, government policies, and spontaneous migration which all impact on both attachment to specific pieces of land, and traditional socio-cultural systems of land management that allows for communal use wherever the community settles. It would e.g. be interesting to understand what people’s attachment to “traditional” pieces of land is once they move. Do the traditional managers still consider they have communal rights on these previous lands even when they are not residing on them any longer? The various systems of communal management are extremely complex and variable and it will be important to get some understanding of the changes these systems have undergone due to relocation of entire communities, e.g. how the socio-cultural land management arrangements of two (or sometimes more) separate ethnic groups play out when they move to the same location and have to share the same communal lands.

Furthermore, the team will compare their initial findings with the results of the impact assessments of communal titling activities in Central Vietnam (Dak Lak) which is currently under preparation by a separate team and supported by GTZ. The study team from Laos will visit Dak Lak Province to get a first hand impression on the lessons learned in Vietnam. In Vietnam, the land law was revised several years ago and includes clauses defining the grounds for granting tenure to groups in situations where such groups still have customary management systems in operation.

Expected Outputs

There will be a number of outputs from this study:

- 1) an outline of the methodology of research and a tentative workplan including a short description of the appraisal methods and draft interview guidelines for the village stays, which will be submitted to the German teamleader of LPDP by the end of the first week of mission,
- 2) a draft structure of the report at the end of the fourth week of mission,
- 3) a presentation (40-60 Minutes) of findings and recommendations and options for the introduction of communal titling schemes in Lao PDR; this presentation will be held at the end of the overall work period in Vientiane in front of 50-60 representatives of the concerned organizations; it will be necessary to ensure that the proposed options for community ownership are legally, socially and economically viable, and
- 4) a final report of 30-40 pages + annexes presenting the main findings and recommendations and any policy reform proposal in English language.

Specific Tasks and Scope

- Analyse the present legal framework with regard to the recognition of communal property rights;
- Review existing literature, project reports, studies etc. dealing with communal ownership of land in Lao PDR ;
- Identify, investigate, and develop typologies of communal land management regimes ranging from traditional to modern practices across a variety of ethnic groups and describe the utilization of common property resources; identify user groups and management regulations and conduct simple institutional analyses at village level;
- Investigate under which circumstances communities, user groups, or village organizations can be recognized as legal entities and who would sign titles or certificates;
- Analyse the effects of resettlement and village mergers on communal land use and community ownership;
- Develop criteria for areas potentially to be registered as communal property based on tenure, use and current management as well as on national policy goals (tenure security, poverty reduction, building national unity etc.) and costs; describe the overall scope of land potentially eligible for registration under collective titles; describe the required land rights for such areas (e.g. right to use the land, to protect/occupy/exclude, right to generate income (lease, mortgage), to transfer the land (sale, inherit), right for compensation etc.)
- Propose options for the formal recognition of community ownership and collective titling mechanisms; for each proposed option the legal adaptations required would have to be outlined;
- Investigate the management structure for future decisions over the utilization of the land, including investment, allocation of access rights, and potentially alienation (Note: It is important to know who's 'name' goes on the title, but more importantly who has the authority to make decisions over the land.)
- Draw conclusions for the overall legal and policy development to allow for the legal recognition of communal tenure arrangements;
- Describe registration procedures for collective titles under systematic and/or sporadic adjudication schemes;
- Prepare a short summary on experiences in collective land titling and communal ownership from the neighbouring countries of Cambodia and Vietnam and compare the situation to the findings from Lao PDR.
- Identify issues to be investigated further in subsequent studies or academic research activities.

Timing

This study will commence on 23 October 2006 and will be concluded by 20 December 2006 (8 1/2 weeks in total).

Team Composition

The study team will consist of three consultants:

1 international consultant with specific experiences in land management, common property resources and communal land rights (Msc. in Geography or International Agriculture or any related subject; at least 5 years experience in land management and indigenous land rights in South-East Asia);

and up to 3 Lao consultants with experiences in land management (e.g. land use planning), traditional land rights, and/or legal land issues, both fluent in English. At least one of these consultants should have an academic background in the field of social sciences or human anthropology.

Towards the end of the mission, the team will be joined by at least 2 lawyers or specialists on legal matters (one international, one Lao) to review the recommendations and to outline the required amendments to the present legal framework in the country.

The team will work under the overall supervision of the Head of the National Land Management Agency and the German Teamleader of LPDP.

Remarks

These TOR refer to the tasks and outputs of the entire team. The individual sharing of tasks and responsibilities is left to the team members.

GTZ will pay all consultancy fees for this study and provide transport to the provinces and within Vientiane.

The team will start working in Vientiane and visit at least 3 provinces in Lao PDR as well as the Province of Dak Lak in Vietnam during this research work.

Appendix II: List of Interviews in Vientiane

Date	Contact Person	Position/Organization
24/10/06	Prof. Dr. Jaques Lemoine	Advisor at the Institute for Cultural Research and Social Sciences Institute
25/10/06	Mr. Vankham Keophandy	Director General of the Department of Lands
25/10/06	Robert Tizard	Village Focus International
26/10/06	Dr. Bernard Moizo	Head of joint National University of Laos/Institute de recherche pour le développement project
26/10/06	Dr. Charles Alton	Senior researcher and consultant for the Asia Development Bank
26/10/06	Mr. James Chamberlain	Researcher and consultant
27/10/06	Mr. Niakeuya Nojongtoua,	Director of Ethnic Department, Lao Front for National Construction
27/10/06	H.E. Mr. Ket Kiettisack	Vice Minister of Justice
27/10/06	Mr. Noupanh Mahaphonh	Director, Department of Policy and Inspection, NLMA
27/10/06	Mr. Peter Jones	Land Management Program at National Forestry and Agriculture Research Institute of Laos (NAFRI)
19/11/06	Mr. Joost Foppes	Netherland Development Organisation (SNV)
12/12/06	Mr. Joost Troy	World Conservation Society (WCS)
13/12/06	Mr. Roland Eve	WWF: Global environmental conservation organization
19/12/06	Ms. Yayoi Fujita	Researcher at NAFRI

Appendix III: Time Schedule

Date	Province	District
October 24 – October 30	Vientiane	
October 31 – November 7	Luang Namtha	Sing
November 8 – November 12	Phongsaly	Mai
November 13 – November 18	Xiengkhuang	Peak and Nong Hed
November 19 – November 21	Vientiane	
November 22 – November 26	Savannakhet	Phine
November 27 – December 2	Dak Lak (Vietnam)	
December 3 – December 8	Bolikhamsay	Pakkading and Thapabath
December 9 – December 21	Vientiane	

Appendix IV: Village Checklist

Checklist for

Sub-district:

District:

Province:

I. Village Context and Attributes of the Community

Questions	Answers	Source	Comments
a) General village information			
Village name and meaning			
Number of settlements/hamlets within village territory			
Size of village territory			
Village boundaries			
b) Village composition			
Population (male and female)			
Number of households and families			
Changes in population: compared to before relocation/ five to ten years ago			
Trends and reasons for in- or out-migration			
Ethnic composition: main ethnic group, other ethnic groups, subgroups (percentage of village population/number of households)			
Changes in ethnic composition compared to 5-10 years ago → what has caused the change?			
Existing clan or other social structure			
c) Village organisation			
Naiban (name, when elected)			
Elder group (number, males/females, role)			
Composition of village administrative council			
Composition of land use committee			
Forest volunteers			
Village collectives or other organisations			
Representatives of ethnic groups ("chao kok chao lao")			
Representatives of clans/ families			
Traditional healers, shamans etc.			
Outsiders working in the village, extension			

workers, NGOs, other organizations			
d) History of the village			
year established			
number of households/families that founded the village			
original village or villages			
reason for settlement in current location			
main events in the villages: floods, famines, in- or out-migrations, LUP/LA, relocation etc.			
e) Village infrastructure			
road access			
year established, support			
electricity/main power source			
year established, support			
main water source			
year established, support			
schools			
year established, support			
temples			
year established, support			
dispensaries or health stations			
year established, support			
agricultural extension service			
other facilities, such as wells, nurseries, etc.			
f) Village economy			
main on-farm and off-farm livelihoods – number of households (estimation)			
other on-farm and off-farm livelihoods – number of households (estimation)			
main sources of income for individual HH			
main sources of income for village			
land tax payments: land types and amount			
changes in livelihoods (compared to before LUA or 5-10 years ago)			
number of families/HH) with full rice sufficiency or surplus			
number of families/HH) with more than seven but less than 11 months rice sufficiency			
number of families/HH with less than 7 months rice sufficiency			
number of (families with) motorbikes			
number of (families with) tractors, etc.			
distance to closest market place (km and travelling time)			
Projects received by the village			
g) Social aspects			

Are there different religions in the village? What is the main belief system?				
Is the village celebrating regular festivals?				
If yes	At what times of the year?			
	On what occasion?			
	Who is leading the festivals?			
	Are there more or less festivals than in the past? Why has it changed			
If no	Were there festivals celebrated in the past?			
	Why did the villagers stop to observe the festivals?			
Own observations				
How is the housing quality (wooden houses, thatched roof houses etc.)?				
How are the houses arranged (e.g. central – scattered)?				
Are there common meeting areas or a meeting hall?				
Other observations				

II. Information about Physical Aspects and Resources of the Village Territory

Questions	Answers	Sources	Comments
a) Physical aspects of the village			
What is the topography, altitude of the village?			
How are the boundaries of the village defined?			
Who delineated the boundaries?			
Are there any conflicts regarding the village boundaries?			
b) Resource use			
Does the community have a land use or land allocation plan and map?			
If yes, when was it developed?			
If yes, how was the plan developed? Who supported the process? Who was involved (inside and outside the community)?			
Do neighbouring communities have land use plans? When were they developed?			
If no, is the community aware of the LUA process?			
If no, would the people see a benefit in having the LUA process implemented in your village?			
What are the different types of land use/micro-ecological zones in the village?			
Have the land use types changed before and after LUP/LA (before and after relocation, commencement of development project, etc.)? Why?			
What areas are used by the entire			

community?			
Has the size of the land use zones changed (before and after LUP/LA, relocation, 5-10 yrs ago)? Why?			
What resources do villagers use outside of village boundaries?			
What land do villagers use outside of village boundaries?			
Are there any resources/zones that are shared with people from outside the village?			
Do outsiders use land inside the village territory?			
If so, are there any restrictions how an outsider can use the land/resources?			
Other comments			

Land use zones		Area/size	Changes?	Main resources
Forest	a) Protection			
	b) Production			
	c)			
Agricultural area	a) Upland rice			
	b) Grazing area			
	c)			
Paddy land				
Plantation land				
Residential area	a) Housing			
	b) School			
	c)			
Others	a)			
	b)			

III. Information about Resource Tenure and Rules-in-Use

Questions		Answers	Sources	Comments
<i>a) Property rights regimes</i>				
Does the village have rules and regulations (village agreement) how to use the different land use zones and its resources?				
If yes	How where the rules developed?			
	How are the rules in the village agreement different from the traditional rules?			
If no	What are the traditional rules applying to the use of resources in the different micro-ecological zones? (see categories in II.b)			
Are all people familiar with the rules and regulations? Are there problems with villagers breaking the rules?				
Do you think it would benefit you and the community if all land in the village territory would be registered?				
What do you think are the benefits of registration?				
What are priority areas to be registered? Why?				

Questions	Answers	Sources	Comments
b) Decision making			
Who is making main decisions now? Is this different from the past?			
Who is enforcing the rules and regulations applying to the use of land and resources?			
Has this changed since the time of the LUA, relocation, in the past 10 years etc.?			
Do the villagers have any decision making power in use and allocation of resources in the different land use zones?			
c) Conflict resolution			
Are there any conflicts over resources between villagers? Over what type of land/resources?			
Are there any conflicts with outsiders? Over what type of land/resources?			
Are there more or less conflicts compared to the time before the LUA, the relocation, the development project, 10 years ago?			
Who is solving conflicts between villagers?			
Who is solving conflicts between villagers and outsiders?			
How are conflicts solved? What 'laws' or traditions are the basis for conflict resolution?			
What exactly is done if there is a conflict? (based on examples)	b) Conflict with outsiders		
	a) Conflicts between villagers		
Other comments			

Summary

1. What are the main issues in the village?
2. What communal land areas were identified? How is the land managed? How does communal land contribute to the economy and social well-being of individual households and the entire village?
3. What are perceptions/recommendations of the villagers regarding land registration?

Appendix V: Village Profiles

Ban Nongbua, Sing District, Luang Namtha Province

Ban Nongbua was established in 1991 by a group of seven Thai Dam families from the same clan who migrated from Phongsaly province. The village was named after the lotus pond (*Nong=pond, Bua= lotus*) located near the settlement area. Later a number of land seekers of different ethnic groups, who were mainly from Phongsaly province and Nambark district of Luang Prabang province, followed and joined the group. Ban Nongbua is a multi ethnical village with a total population of 1,555 inhabitants. Thai Dam and Lao Pane are the two major groups with 674 people and 322 people respectively. The rest are Lolo, Phounoy, Akha, and Lue.

The village is located along the main road five km to the south of Muang Sing town. It is surrounded by the original villages and there is no more land to be claimed by new comers. The village territory makes up only 45 ha of paddy land, 10 ha of settlement areas, and a small portion of shared forest. Only 45 families who earlier settled there had paddy fields, the rest have to use land outside the village for staple and cash cropping or to find other occupations such as wage labouring for their living. With this land use situation, the district decided not to conduct LFA for the village and therefore there has been no land use planning for the village. However, the chief of the elder group expressed his interest and intention to request some forest land from their neighbouring villages.

The majority of the people in Ban Nongbua are self-subsistence farmers. Rice is a major staple crop for every household. Due to the lack of land for both paddy and upland for rice cultivation, some households have to use land in other villages and some locations are more than 20 km away from their village. Other main economic activities include livestock raising, handicrafts, and vegetable growing.

Apart from paddy and settlement area that all are claimed by individuals as private land, the villagers reserve pieces of land as communal land such as: school, fish pond, and forest land. Interestingly, the villagers exchanged the communal fish pond with a piece of (private) land to build the school. The current communal forest land that the village has now is a piece of land that is shared with two neighbouring villages and has been leased out to a Chinese company to plant bananas. Villagers claimed that there are no conflicts over land but the water supply for their paddy fields. Since water is a critical part of paddy cultivation, villagers are now negotiating with their neighbours to set up rules for water management. According to the villagers in Ban Nongbua, their neighbours developed their paddy fields near the source of water and use the canals built by people in Ban Nongbua. They drain most of the water from the canals to their paddy fields without any consultation with paddy owners in Ban Nongbua.

Ban Mom, Sing District, Luang Namtha Province

Ban Mom is named after its long legend of migration; it would be traced back hundreds years ago when people escaped from the war in China and were hiding in the forest their faces just painted with burned twigs. The villages might be established 100 years ago. Ban Mom has 396 inhabitants and 113 families. Almost all are Lue with four Khammu and three Thai Dam families who are married with daughters of Lue villagers.

Ethnic Lue are a population of 123,000 inhabitants and make up the sixth largest ethnic group in the LAO PDR (Lao Population Census 2005). The Lue belongs to the Thai Kadai ethno-linguistic group and live in the lowland of northern Laos, including the provinces of Phongsaly, Luang Namtha, Bokeo, Oudomxay, Sayaboury, and Luang Prabang (LNF 2005).

With the support from staff of Sing district and GTZ/RDMA project, Ban Mom conducted LFA in 2005. Village boundaries were defined using natural features such as streams and ridges. The village is located on the main road from Sing district centre to the Chinese border. As a result of road improvement in 2000, livelihoods of villagers were improved through cash crop cultivation, especially sugar cane that is exported to Meng Yuane in Yunnan, China.

The majority of the people in Ban Mom are engaged in paddy cultivation. More than 90 percent of the households grow rice in rainfed paddy fields. Main economic activities include the cultivation of rice, sugar cane, rubber, and livestock keeping. Villagers also lease paddy land during the dry season to Chinese companies to grow chilly and water melons.

Two households of Ban Mom used land in the neighbouring village territory for sugar cane cultivation, but with the help of DAFEO the land now belongs to Ban Mom. So far there are no major land conflicts with neighbouring villages. However, as the households in the village convert their upland fields to rubber plantations, sometimes the plot boundary expands beyond the original size into the forest land. Two households have cut new fields in the protection forest. The Naiban and the village committee educated them and order them to stop further cultivation.

As village boundary are fixed and all agricultural land is allocated to individual households, there are only small part of forest defined as use or production forest that close to the protection forest as well as international border with China. According to the rules any uses of forest products in the production forest either by villagers or by outsiders require a fee. So far the rules are not enforced as the Naiban and the village committee consider the cutting of bamboo and collecting of bamboo shoots and mushroom for household consumption. Cutting timber, poles, and bamboo for sale are prohibited. Outsiders need permission from the village committee in order to cut trees. Forest areas are considered as the responsibility of the entire community. All villagers enjoy equal access rights.

Two remnant forests located in the South and South West of the village are protected by villagers as village and district spiritual forest. No trees can be cut in the sacred spirit forest area and violators are fined. Management of the spiritual forest are under the shaman in the village. Every year villagers around the areas came to pay the ritual to the district spirit forest. Villagers in Ban Mom expressed their concern about future generation when there is no land to be allocated to new families. Access to market favours households who have financial and Labour capacities to expand more rubber plantation and cash crops. Villagers might lose parts of their rubber plantations that were established with outside investment to investors that holds management rights. Naiban expressed his interest in registration of all communal village areas in the name of the village, especially priority is given to production forest in order to create sense of ownership and to avoid violations of the rules and ensure that management decisions are made on the village level. It is feared that registration as state land might superimpose state management decision on the village.

Ban Laokhao, Sing District, Luang Namtha Province

Ban Laokhao was established in 1991 with 43 households of Akha ethnic group. In the old days, the village location used to be the rice barns (Laokhao) of people in Houay-Namkeo-Noi village (the former village). Since the village located 4 km away from the *Laokhao* and they had to cross the mountains to take their rice, the people decided to move and settle near their *Laokhao* and the name of the village just followed the location of their rice barns.

Today, Ban Laokhao has 56 households (66 families) with 266 inhabitants. All villagers in Ban Laokhao are Akha ethnic group of Pouly sub-group.

Traditionally, Akha strongly believe in spirits as the root of their cultural and social practices. They believe in both “good” and “bad” spirits. House and village spirit are “good” spirits as they represent the spirit of their ancestors who looked after their family members. Trees, forest, and river spirits are considered bad spirits. The bad spirits may cause them sickness and illness. As parts of these spirits Akha people pay many rituals and number of celebration through out the year.

Ban Laokhao conducted LFA in 2000. The total area of the village is 505 ha. The boundary between the villages were agreed and demarcated during the LFA processes. Ban Laokhao has recently got access by road that was constructed by villagers. In addition, with the supports from development projects, the village built a school, a guest house, water supply system, and installed solar electricity, and villagers can now reach the district centre in Muang Sing about 8 km.

Villagers in the Ban Laokhao are subsistence farmers. The village has 100 ha of paddy land, therefore almost all but three households have paddy land. In additions to rice cultivation, villagers are also engaged in livestock raising, vegetable growing, and collecting of NTFPs. There are 21 families that have paddy land outside the village territory and 24 families from Ban Yangluang have paddy inside the village territory. So far there have been no land use conflicts between neighbouring villages.

Based on the LFA and LUP, apart from land held by individuals such as paddy and settlement areas, villagers have classified land in different zones and categories. Communal land in the village include use forest, shifting cultivation land, school, cemetery, spiritual forest, recreation area, home garden land. Each zone and category has rules to use and manage for the benefit of the whole village. Shifting cultivation land will be distributed to each family for use in each year based on the agreement between chief of village and elder group. Garden land will be distributed to each family depending on their actual need for production. Traditional rules have been strictly applied to the spiritual forest and the recreation area (the swinging areas), if anyone violates the rules, one must pay the ritual to the forest spirit by killing a small pig to worship. In the use of the forest villagers are allowed to collect vegetable, bamboo, and firewood as well as timber for house construction. Forest areas are under the responsibility of the entire community.

However, with recent expansion of rubber plantation and investment from outside the village, use forest and production forest is under threat and apparently converted into rubber plantation and has been transformed from communal land to private land.

The village administration expected that land registration could provide land and resources tenure security for villagers especially to give authority and decision making to manage and protect their natural resources.

Ban Huayhoy, Sing District, Luang Namtha Province

Ban Huayhoy is named after the stream. The village was established in 1998 by merging of Akha groups who lived in old Huayhoy and two groups who relocated from Viengphoukha District. As a result of government policy on poppy eradication, Akha people have to look for more permanent agricultural land especially paddy field. Currently, Ban Huayhoy has 33 households with 164 inhabitants. There are three subgroups living in the villages: Chicho, Ko Phen, and Puli. All are practicing the same belief.

Akha has a population of more than 90,000 inhabitants and make up the ninth largest ethnic group in the LAO PDR (Lao Population Census 2005). The Akha belongs to the Sino-Tibetan ethno-linguistic group and live in the highland of northern Laos, including the provinces of Phongsaly, Luang Namtha, Bokeo, and Oudomxay provinces (LNF 2005).

Ban Huayhoy, with the support from staff of DAFEO of Sing district, conducted LUP/LA in 2005. Village boundaries were clearly demarcated thru consultation and agreement with neighbouring village committee and using natural features such as streams and ridges. People from Huayhoy can no longer cross into neighbouring territory for cultivation and use other resources as they used to. Some villagers are still cultivating paddy in neighbouring villages that they have used since before LUP/LA. No claims on land of old settlement areas in Viengphoukha District. In the past, before LUP/LA, villagers had problems with Hmong who cleared forest land claimed by Huayhoy, but now this plot belong to Huayhoy and villagers planted rubber as collective plantation.

More than 80 percent of the population is engaged in rain fed paddy and upland rice cultivation. Villagers generate income by growing sugar cane, raising livestock, and selling Labours. There are two rubber planting schemes: a joint investment with outsiders with 50-50 benefit sharing and by self investment of individual households. So far about 20 households grow rubber in an area of 15 ha. Additional income is also generated from selling bamboo shoots and mushroom in the market in Muang Sing.

Villagers have a very low literacy rate especially among the women. The Naiban could not read and write and even speaking and communicating in Lao language, but he keeps all official documents quite well.

Village has forest areas and upland as communal lands. Outsiders have no rights to use the land but everyone inside the community has access rights to the forest. No forest land can be cleared for upland rice. Depending on the type of forest, other restrictions apply. However, payment for forest products as stipulated in the rules and regulations are not implemented. Rights to forest land for upland cultivation in good locations can be established for example Naiban's old fallow forest land. Upland rice field are annually allocated to individual households by Naiban and village committee. No individual claim on fallow and upland unless there is an investment in permanent cultivation.

Although the village had just completed LFA in 2005, but it seemed that the land use plan of the village is already outdated. Parts of the regeneration forest have been converted to a rubber plantation as well as a large part of agricultural land is also converted into a rubber plantation.

It is interesting to have a follow-up observation on communal (collective) rubber plantation established with the help of outside investors, in which all villagers participated in the development of the rubber plantation. It is still unclear how the land or trees will eventually be divided up among the villagers.

Ban Houayvangkao, Mai District, Phongsaly Province

Ban Houayvangkao is named after the stream pool, (Houay is stream, vang means the stream pool, and kao means old). The village was established about 400 years ago. Originally, 10 families of Thai Dam from Dien Bien Phu moved in and settled in the village to develop paddy fields. Today the village has over 226 inhabitants of 55 families all of them are Thai Dam ethnic group. Culturally, like other main stream Thai Dam ethnic groups, villagers believe in animism. Administratively, the village administrative committee is from the village election under the supervision of the district authority. The current chief of the village is in his fifth term.

As the district slowly proceeds to conduct LFA due to the lack of funds and human resources as well as the village is located a bit far from district administrative centre, there is no LFA conducted yet in the village. Although, the elder group and chief of village could not provide information on the size of their village they could indicate the location and the boundary of the village with their neighbours where: to the east with Ban Omkaneng, to the west with Ban Houay Vang Mai, to the south with Ban Nakham, and to the north with Ban Houay Oune and Ban Bounkhaio. Although the village has a long settlement history, not until 1973 was the village connected to the district centre by a six kilometres road.

As most of households in the village are self-subsistence farmers, they cultivate paddy rice in the flat lowland near their settlement and some have cultivated rice in the upland. Other main livelihood activities are buffalo raising, vegetable growing and collecting of NTFPs. There is a small stream that flows through centre of the village and along the bank of the stream a space is provided for households to grow vegetables for both self consumption and sale. In general, most households are rice sufficiency; there are only a few households that have rice insufficiency of about seven months. Compared to villages in the district, this village is relatively wealthy as 26 households have motorbikes, 3 households have tractors, and 20 households have small rice mills. The main income of the village is from selling rice, buffaloes, chicken and fish.

Although the LFA has not yet been conducted in the village, villagers have their own traditional rules in classifying and zoning land in the village. Apart from the paddy and settlement areas that are traditionally recognized as private or individual land, the village also has communal land such as conservation forest, production forest, sacred forest and cemetery. In addition, the village also reserved land as public area of 1 ha for school.

As villagers developed paddy field around their settlement, there is no household using land in other neighbouring villages. However, villagers reported land use and boundary conflict with Ban Houay Vangmai to the west and with Ban Nakham to the south. As the boundary of the village has not yet been formally settled with the neighbours and Vangmai village, authorities ignored the pre-agreement on village boundary that both villages settled earlier.

Village administration expressed and believed that through formal land use zoning, land allocation and boundary demarcation would help the villages to solve land use conflicts with their neighbours as they could better monitor the use of village land and resources. They also believed that LFA would provide them management rights to their land and forests and these rights would be recognized by the state that make them feel confident in managing and protecting their resources.

With current unsolved land use conflict between villages, it seemed that their traditional rules in managing land and resources may be effective only within their own community but to deal with outsiders or their neighbours, they would need support from legal and administrative systems of higher authorities.

Ban Phia, Mai District, Phongsaly Province

Phia was named after the administrative hierarchy who lived in the village during the French colonization. As the people relocated several times in the areas, villagers could not exactly tell how long the village was established, but claimed that it was more than 100 years old. Currently, there are 42 households with 256 inhabitants of which 135 are female living in the village. There are a number of clans from the village but Tiger and Bird were the names of the majority. The chief of the village, who used to serve as the district propaganda officer during the 60s and 70s, became the chief of sub-district during the 80s and is from the tiger clan.

All villagers in Ban Phia belong to the Khammu ethnic group. With 613,893 members, the Khammu make up the second largest ethnic group in the LAO PDR (Lao Population Census 2005). The Khammu belongs to the Mon-Khmer language group and live mainly in the mid-high elevation of northern Laos, including the provinces of Phongsaly, Luang Namtha, Bokeo, Luang Prabang, Houaphanh, and Xiengkhuang.

The majority of the people in Ban Phia are subsistence farmers. Most of the households grow upland rice in the mountains surrounding the village and some are practicing rainfed paddy fields along the streams. Other main economic activities include livestock raising, vegetable farming and collecting of NTFPs. As the villagers can remember their settlement history, villagers who were relocated eight times along Houay Teng and Houay At, cultivated upland along these areas and nowadays their former upland fields are included in the village territory. As a result, the village has a relatively large territory and villagers share these uplands as communal land to practice shifting cultivation.

So far there have been no conflicts with any of the neighbouring villages over the use of upland except for the spiritual forests. Within the village territory, there is a village spiritual forest that is located north of village territory and borders with Saenelouang village. Traditionally, cutting timber from this spiritual forest is prohibited. Recently, villagers from Saenelouang come to cut the trees from the spiritual forest and villagers observed that the encroachers were not apprehended. The villagers in Ban Phia later cut the trees in this village spiritual forest. It is claimed that the size of the spiritual forest has decreased from about 6 ha to only 3 ha now.

People from Ban Phia collect vegetables, bamboo and firewood, as well as NTFPs from their fallow land. Small poles and timber for house construction are usually cut from the village use forest. Any household that cut poles and timber have to pay 30,000 kip as a maintenance fee to the village committee. Forest areas are considered the responsibility of the entire community. All villagers enjoy equal access rights. Apart from individually claimed plots for paddy, plantation, and hedgerow cultivation plots and housing, all land within Ban Phia territory is considered as communal land.

Villagers in Ban Phia need to have more production forest in addition to what they try to establish at the moment. Villagers expressed their concern about the introduction of rubber plantation on communal upland that would change the land use system of the village such as shortening the rotation of upland field. Converting communal to private plantation will affect the poor, they will get poorer soil since they can not catch up with the better off household in converting communal land to private land through the establishment of rubber plantation.

Villagers expressed that registration of land would make it easier for land tax collection. The introduction of rubber plantation makes villagers aware that land registration would secure their investment in the future.

Ban Ompoulou, Mai District, Phongsaly Province

Ompoulou is a Khammu term that means surrounded by mountains. Initially a Khammu village, the village is over 50 years old. All people in present Ompoulou belong to the Laosoung Koh ethnic group. There are 73 households with 438 inhabitants, of which 210 are female in Ban Ompoulou. There are five clans and the Li clan is the main and dominating clan in the village. The current chief of the village who is from Li clan and used to serve in military during the war is in his third term.

The majority of the people in Ban Ompoulou are subsistence farmers. All households grow upland rice in the mountains surrounding the village, no household has paddy land. Poppy cultivation used to be part of the livelihoods of people in the village. It contributed income for households, especially to buy rice. In 2000, the government started an opium eradication program as part of its international commitment. Since then the villagers have to gradually reduce growing opium and in 2005 they officially stopped growing this crop. Other main economic activities include livestock raising, and collecting of NTFPs (broom grass, paper mulberry, and glutinous bark). Village can access to Mai district centre and market through the new road access built by the telecom company. As a result of road improvement, many households bought motorbikes. At the time of the visit, villagers even used motorbike to carry water from the stream down deep below the village settlement.

With support from the district and Mennonite groups (MMC), the village conducted LUP/LA in 1998. As a result, villagers classified their land into different categories including upland field, reserve land for agriculture, conservation forest and production forest. Upland fields are used and managed as communal land. Every year the village committee and elder group will decide what portion of upland should be cultivated then individual households will be allocated plot of land. In recent years, villagers have started to recognize the user right of previous users, and certain parts of the land belong to certain clans. Plots that are not needed by previous user will be allocated to new user for the new growing season. Current rotation of plot is about 5 years as compared to 7-10 years before LUP/LA.

There are many conflicts over boundaries and the use of upland areas for rice cultivation, especially with Houay Vang Souk (Thai Dam village). Villagers claimed that their village territory become smaller after LUP/LA. This causes land use conflicts with their neighbours when villagers clear land in areas they used to cultivate but now are claimed by their neighbours as part of the boundary agreement. Villagers also complain that they were treated unfairly as they have weak communication skills because of language barriers and lack of social networks with authorities. To avoid further conflicts, villagers now pay rental fees to their neighbours in order to cultivate land on the borders.

Next to the scarcity of land and lack of timber for domestic consumption, villagers are concerned about being forced to relocate the village. District officials have negotiated with villagers, that they would receive a water supply system in exchange for relocating near the main road. Villagers keep rejecting the proposal. The new location is far from their fields and could cause even more conflicts with their neighbours. Villagers also made bad experienced with previous relocation and are concerned about the safety of the community members.

Villagers had little experiences and ideas about registration. They would follow the suggestion of the district. However, they felt that the forest belonged to the village. Regarding upland areas, the Naiban believed that individual title would be better since land use could be better controlled. Individual title would also provide incentives for investments in land. The Naiban proposed, however, that before individual titles are issued, land should be newly distributed, so that people with large land areas would share with land poor families.

Ban Sophoune, Mai District, Phongsaly Province

Sophoune is named after the stream that flows through the village. In Thai Dam Language, 'Sop' means mouth and 'Houne' means fertile and beautiful. As the stream converges with Nam Yone the location of the village is named after it. The first settlers in the village were nine households of Thai Dam ethnicity who moved from Dien Bien in Vietnam. Now there are almost one hundred families belonging to three different ethnic groups. Thai Dam and Thai Daeng form the majority with each about 40 percent. The rest of the people are ethnic Khammu.

Land allocation was carried out twice in the village. It was first conducted in 1996 with the support from Mennonite Groups (MMC). In 2000, the district conducted and supported the second LUP/LA. The two provided different figures for the land use zones, it seems that according to the second LUP/LA, the village has a larger territory. However, the Naiban confirmed that the village boundaries were not changed. The Naiban could not give a reason why the second LUP/LA was needed.

It was noted that both LUP/LA had different land use classifications as well as the areas of each land use type. To manage different types of forest, rules were recognized by all villagers. But there are problems with outsiders who come to cut poles and bamboo from the village's production forest. The rule was set to punish encroachers but so far there is no fine and punishment. Only verbal warnings were given to the encroachers. By the rules, anyone who wants to cut timber and poles from the production forest is required to get permission from the village authority; especially from the chief of the village.

Upland areas, conservation, protection and production forests are defined as communal land. Upland areas designated as agricultural land, has 6,000 ha, and different zones are classified and rotated. Upland cultivation is rotated annually from one zone to another. Individual households would select plots of land in the designated zone for slash and burn. Individual who clear the land and cultivate would have the rights to possess and exclude others from the products that they grow. After the fields are abandoned and left fallow, there are no individual rights that can be claimed on the land. Land becomes common property. If an individual continues using the land and planting crops, the user's rights would be valid until the date of crop harvested.

As the village is located along the strategic road for future international access, the Naiban is thinking of building guest houses and facilities to receive guests and tourists. He is also a party secretary who holds strong power in decision making and rules enforcement. The Naiban expressed that other people who might replace him would have less power and influence on village development; especially to enforce the communal land management.

Villagers were interested in registering their communal land. Priority was given to communal forest land and upland cultivation areas. However, villagers are also concerned that they would have to pay tax on registered land. Other concerns about the village were the conservation of fishing grounds in the river that flows through the village (Nam Nuane). There is an increase in the number of commercial fishermen using poison, dynamite and electric shock. As a result, fish targeted are dead, and using poison also pose a threat to human health, especially to those who do not know how the fish was caught.

Ban Saen In, Mai District, Phongsaly Province

The village's name 'Saen In' comes from a person's name 'In' with the rank of 'Saen' who used to live this village. In 1965, the village consisted of 12 families, and they build their houses close to each other within the village wooden fence. Ban Saen In covers an area of 1,115 hectares, with the total population of 134 people (66 female) living in 24 households. All people in Ban Saen In are Khammu, but it is currently in the process of being consolidated with the 12 families in Sobnouan village that are Lao Loum.

The village experienced in and out migration:

- In 1976, all families moved out to Ban Kok-ngiu. The reason for the move was due to the government policy to encourage people to settle along the main road.
- In 1997, all families returned back to their old place because the new location was too far from their upland field and livestock grazing areas.

Ban Saen In is located five kilometres away from the main road. Local people started building a village access road in 1945. In 2003, the German Agro Action supported the upgrading of the road in a food for work project. However, the village road access is still impossible to pass by a car, only available for motorbike and walking. In the village, there are 2 families which possess micro-hydro power turbine, using water from the stream located 500 meters from the village such as: Houay Tin, Houay Oon, and Houay Noua. In the year 2000, the villagers jointly built a primary school for the first and second grade. After completing the second grade, the students have to continue studying in other villages that are ten kilometres away.

The geographical landscape of Ban Saen In is formed by mountains. People are mainly engaged in shifting cultivation which is done on eight zones. The shifting cultivation will be conducted in each zone in each year by allocated 3 hectares of land to each family. The secondary occupation is cattle raising. Starting in November 2003, 87 breeding cows were supported by Vietnam. The total number of cows has now reached 124 heads and it is time to return the breeding cows to the committee. Villagers also engage in cash crops farming such as garlic, sesame, maize, chillies and eggplants. Ban Saen In is located 23 km far from the market, around 50 minutes riding a motorbike.

The village started to have regulations on land use after the land allocation reached the village in 2002. By having land use regulation, villagers have to use land in accordance with the rules and the shifting cultivation practice has changed. People have a good understanding of the regulations since the local authorities were trained on forest management and livestock raising by the district agricultural staff. The regulation on forest land management is posted at the village entrance gate. Villagers can cut trees from the use forest for domestic consumption (building houses, rice storages etc.) but must first seek the approval of the Naiban and village elder group. Any cutting of trees from the conservation forest and the protection forest will be fined 40,000 kip²⁵/tree. But villagers can collect bamboo shoots or other NTFPs from the area.

Land in the village are classified into different categories as follows: use forest, sacred forest, grazing area, conservation forest, protection forest, rehabilitation forest, reserved land for agriculture, and other land. Furthermore, the area for each type of land use was identified in a sketched map. People in this village did not use natural resources from other villages. People from other villages can request to do shifting cultivation in Ban Saen In but need approval from the village administrative authority and need to pay fees to the village. People expect that registration of their lands will protect the rights and benefits of the local people from the intrusion of outsiders.

²⁵ Kip is the local currency in the Lao PDR: 10,000 kip = \$US 1.

Ban Nong Sam Che, Pek District, Xiengkhuang Province

Ban Nong Sam Che is a Hmong settlement in Pek district, Xiengkhuang province. According to the villagers, the settlement was established by the Mua clan over 150 years ago. Most members of the Mua clan have moved on and the Lao clan and the Ya clan now form the majority of the village population. Members of two other clans settled in Ban Nong Sam Che after 1975.

The Hmong society centres on the patrilineal clan system. Ties between the members of the same clan reach far beyond the village level and social cohesion within the village may even be secondary to clan relationships. According to the 2005 population census, they number about 452,000 people and form the third largest ethnic group in the country.

Ban Nong Sam Che is named after a natural triangle shaped pond that serves as water supply for the 64 families in the village. In the early 1990ies, the administrative boundaries of Nong Sam Che were defined for security reasons. The administrative village territory of only 572 hectares does not reflect the actual user area of the villagers. People from Nong Sam Che regularly farm areas that officially belong to neighbouring communities.

The majority of villagers in Nong Sam Che is not rice sufficient. In 2005, only four families harvested enough rice to last for an entire year. Before poppy cultivation was successfully stopped in 2002, villagers sold opium to compensate for the lack of rice. Nowadays, the main source of income for all households is livestock raising. There are more than 250 cattle, 70 buffaloes and 80 horses in the village (Pek District Statistics 2005). Every family has at least 3 cattle and the wealthier ones have up to 60 heads. Since livestock is such an important part in the village economy, the management of grazing areas is crucial for the well-being of the community.

Traditionally, all clans have specific areas for grazing that only clan members can use. Other areas remain communal and all villagers have the right to access the areas for upland cultivation. Recently, there have been conflicts over grazing areas. More and more families have started to erect fences around grazing areas. They did not ask anyone for permission. Due to land scarcity villagers have started to fence off previously communally used grazing areas. The decrease in communal grazing areas has caused problems for families that cannot afford fencing material. This has been realized by all villagers but particularly members of the old clans demand the dismantling of fences to re-establish communal grazing areas. However, they ask for the recognition of private or clan-based rights established prior to 1975 (before the arrival of the new clans). The new clans are not willing to unilaterally take down their fences and only few areas have again been made available as communal grazing areas.

Interviewed villagers, especially the Chao Kok Chao Lao, rejected the idea of private land registration. Apparently, other missions have visited the village and asked if there is a need for land allocation and registration. Villagers are afraid that losing the flexibility in the allocation of upland areas for rice cultivation and the option to use the administrative territory of neighbouring villages will make it impossible for them to survive in Ban Nong Sam Che. Due to the land scarcity, villagers did therefore not want any outside interference with their internal system. Private land registration would diminish or even completely remove the communal land and along with it the future options for the next generation. The idea of a communal title was perceived as a possible option. Villagers felt that this would equally benefit all villagers. Private titles would be an advantage for only the more affluent families.

As a condition for communal title, villagers demanded that the area titled would reflect their actual user area not the administrative boundaries. Areas used for cultivation in neighbouring villages would need to be included in the communal title.

Ban Phone Kham, Pek District, Xiengkhuang Province

Phone Kham is not the original name of the village. Prior to 1973, the village was called Dong Chanh for over 170 years and was named for its location that is surrounded by huge areas of Chanh bamboo forest. In 1969, the Indochina war broke out and all villagers moved out from the village to live in Vietnam. When the war ended in 1973 people returned to settle in their old village and called the village Ban Hang (means abandoned village). Later, in 1978, they changed the name to Phone Kham according to the suggestion from the district authority. Today the village has 38 households with 240 inhabitants. Typically for the Phuane ethnic group, villagers in Ban Phone Kham established the village by consolidating different small hamlets where a group of households built their houses near each other and their paddy field. There are 6 hamlets in the villages.

The majority of the people in Phone Kham are subsistence farmers. Every household grows rice in flat rain fed paddy fields and all households are rice sufficient. Other main economic activities include livestock raising, vegetable farming and collecting of NTFPs. There are lots of small streams for vegetables farming. The road to the village was improved to become an all weathered road in 2004. In addition, the village also got support from different development projects such as: IFAD for cattle bank, Nam Ngum Watershed Development (ADB), and Handicap rehabilitation project, supported by a Canadian fund. Besides the infrastructure development, villagers in Phone Kham are concerned about the negative impacts from the road improvement and accessibility that might lead to the exploitation of timber and forest resource from the village. In addition, the older generation is also concerned about number of the young generation who moved out the village to study and work in the city that in the future would affect their farming system as not enough labour will be available for farming. Another concern relates to UXO found in the village. In last 25 years, more than 20 people have died because of UXO.

With the support from district authority, the village conducted LUP/LA in September 2006. The boundary of the village was identified, agreed, and demarcated with their neighbours. Villagers commented that after land allocation their village territory was smaller. The village has still quite a large area of paddy field so no one needs to use paddy land in other villages. However, neighbours cultivate 16 ha of paddy land in Ban Phone Kham and have to pay tax the village of 30kg of rice per hectare. Prior to LUP/LA the village had some small conflicts with neighbouring villages over the cutting of trees for upland rice cultivation. After the boundary agreement was settled the problem was also solved. LUP/LA led to the classification of land use within the village, apart from agricultural land that legally and traditionally was recognized as private and individual property, especially forest and grazing land were considered as communal or village land. Following the rules written in the forest law, villagers modified restriction, permission and punishment for the use of forest. In production forest, villagers have equal rights and are allowed to collect vegetables, bamboo, NTFPs, and firewood, as well as to harvest timber for house construction but cutting timber for sale is prohibited. Outsiders need permission from the village committee in order to cut trees. Forest areas are considered as the responsibility of the entire community. There is no restriction on the use of grazing land for both villagers and outsiders.

Village rules are enforced by the village committee and elder group. Violators who cut down trees from forest or clear forest land will be fined, 15,000 kip for a small tree and 25,000 kip for a big tree. In the past villagers can cut down trees as their need but villagers said that the new rules are a good way to protect the forest for the next generation. The village administration believes that zoning and allocation of land could help the village administration to monitor the use of the village resources.

Villagers and the village administration also hope that land registration could provide tenure security for the people in the village. Once the rights of the people are recognized by the state, the villagers felt confident that their natural resources are in their hand.

Ban Khai, Pek District, Xiengkhuang Province

The first group who settled in the village was not known, but according to elders of the village the current settlers moved into the village in 1920. Ban Khai has 64 households with 382 inhabitants. Like other villages in Xiengkhuang province, villagers left their village during the Indochina war. As the war ended in 1973, there were 35 households with 80 people who returned and settled in the village. Until now the war still threatens the lives of villagers, since UXO are still spread over their paddy and cultivated fields.

All villagers in Ban Kai village belong to the Phuane ethnic group which is one sub ethnic group of Lao. There are more than 3000 members registered as Phuane in 2005 (Lao Population Census 2005). The majority of the people in Ban Khai are subsistence farmers. Every household grows rice in rain fed paddy fields. All households have paddy land and are rice sufficient and 50 percent of households have surplus rice for sale. In addition, villagers are also engaged in other activities such as livestock raising, vegetable growing and collecting of NTFPs. As the village is located in the foothills and has some streams flowing through the village, many households grow vegetables and generate income from this activity. All households have paddy land within the village territory. Four households from neighbouring villages have paddy fields in the village.

With the support from the government and development projects, infrastructure in the village has recently been improved. Apart from the support to build kindergarten and elementary schools in the village, the road to the village was improved to an all weathered gravel road in 2004, and irrigation system was developed. Many households have farm tractors, motorbike, and rice mills. In addition, some households also invested on small hydro-generator and installed along the streams and irrigation canal to get light for their households.

Land allocation was conducted in 1991. As a result different land uses have been classified. Apart from permanent agricultural land that is owned by individual household, the land for school, temple, cemetery, the village also have communal grazing land, plantation, production forest and protection forest. Villagers perceived that the communal lands are under the responsibility of everyone and households in the village to manage and protect. Rules and regulation were developed and applied for forest land and grazing land. Villagers and outsiders to cut timber and bamboo in production forest required permission from village committee and village forester, priority was given to members of the village. Cutting timber for sale is prohibited. All villagers enjoy equal access rights and there are no restrictions on the use of NTFPs. There are no restrictions on the use of grazing land. Members of the village and outsiders are allowed to free their cattle in the areas.

Villagers and the village committee expressed their happiness in keeping forest as compared to their neighbouring village where forest land is almost gone. However, their rich production forest also has attracted outsiders, especially to those who have no agricultural land to clear and use as their agricultural land. So far, two cases have occurred and the village's committee noted that they had difficulty in dealing with outsiders who breached the village rules and regulations.

Trends in land use learnt from this village is the transformation of communal grazing land to individual grazing land. As the development project (ecological agricultural project) introduced to the village on grass improvement, the project provided seed of grass, barbwire, and land tilling to pioneer farmers who voluntary to take care of the so called demo-plots. Projects demonstrated a promising grass improvement to villagers, and now more households expressed their interest to have their own individual plots. To this trend villagers also expressed that allocated communal grazing land to individual would be much better than leaving it in the natural condition which is less productive.

Ban Or An, Pek District, Xiengkhuang Province

Ban Or An is named after the Hmong clan that established the village in 1961. The meaning of the village name is not known to the villagers. Most villagers who settled in the village are originally from Nonghed district. During the time of the Indochina war, villagers lived in the nearby forest areas. In 1974, there were 20 families who returned and settled in the village. As of 2006 Ban Or An has 39 households with 278 inhabitants and all belong to the Hmong ethnic group. Population of the village is very dynamic due to the in and out migration, as indicated by number of population in 2005, the village had 49 households with 322 inhabitants. Main reason of out-migration was due to a lack of land for cultivation as well as the government policy in arresting shifting cultivation.

Between 1994 and 1998, Ban Or An was selected as the target village to develop village land use plan as part of the Nam Ngum Watershed Conservation Project (NAWACOP) supported by GTZ. However, the NAWACOP phased out in 2002 and the village only concluded initial steps of village land use planning. At the time of the visit the village committee could not provide a figure on the size of the village territory, however, they could indicate the village boundary with their neighbours.

Although the village has yet to finalise LUP/LA, land use zoning in the village has been initiated and recognized by villagers. Apart from the paddy and other permanent agriculture and settlement areas that have been recognized as private land, the village has also identified and classified forest conservation, forest production, cemetery, grazing areas as communal or village land. Apart from the land within the village territory, villagers also have inter-village communal grazing land that is shared with their neighbouring villages.

The majority in Ban Or An are self-subsistence farmers. Most of households have paddy land which varies in size and rice is a main crop that can be grown only in the wet season as in the winter the climate is too cold for rice. There are only 3 households that are rice sufficient, and the rest have rice insufficiencies ranging from two to four months. Apart from rice cultivation, villagers also live on and generate income from livestock (buffalo) raising, vegetable growing, and NTFPs collection. There were 22 families that have paddy land in neighbouring villages and so far there is no report on land and forest use conflicts with neighbouring villages.

Pressure on land use and land scarcity is relatively high especially to households that have not enough paddy land and are dependent on shifting cultivation in the upland for their living. As village boundary was agreed with their neighbours and some portion of land within the territory has been demarcated as conservation and protection forest, this lead to the restriction on land use for villagers especially to the households who are dependent on shifting cultivation.

Villagers in Ban Or An noted that their forest resources has been declining. The village administration believes that zoning and allocation of land would lead to a better monitor and use of the remaining resources. The village administration also hopes that land registration could provide land and resources tenure security to village and therefore it would support the village administration in management and protection of their natural resources.

Ban Tat Hai, Phine District, Savannakhet Province

The name of the village “Tat Hai Xe” follows the name of a water fall and river near the village. The village was established in 1988 by separating from Ban Tat Hai Khok. At first, 18 families settled in the area to raise livestock. Presently, there are 91 households with 693 inhabitants.

The majority of the population in Ban Tat Hai belongs to the Katang ethnic group. About 40 percent belong to the Lao Xouay, a sub-group of the Lao ethnic group.

The majority of the people in Ban Tat Hai are subsistence farmers. Almost every household grows rice in rainfed paddy fields. Besides, villagers are also engaged in livestock raising, collecting NTFPs, and fishing as village locates along the bank of Xe Bang Hieng river. Since the village is located 35 km away from Phine district centre, it is not often that villagers travel to the district markets. Middlemen and traders regularly come to the village to sell goods and buy agricultural and wild products and fish from villagers. During the Indochina war this road played a strategic role as the area was part of the most strategic point of the Ho Chi Minh trail and battle field. Unfortunately, the road that used to connect the areas to other southern provinces now just connect the villages to other areas in Phine district because the bridge crossing Xe Bang Hieng was destroyed during the war, since then there is no attempt to build a new bridge.

Not long after the people moved in and raised their livestock in the area as state farm, the government also declared the forest land in the areas as the National Biodiversity Conservation Area (NBCA), known as Dong Phouvieng National Park. The delineation of the park boundary also included land used by villagers. In 1999, with the support from Phine District, the village conducted LUP/LA and formal village boundary was agreed according to the national park boundary. According to the information from agriculture and forestry district officials and villagers, about 10 households would need to be resettled as they live and use land inside the national park that is located to the east of the village.

With the total village area of 2,600 ha, villagers defined land into different land use zones. Apart from the agricultural and other land owned and used by individual and households, the village has production forest, conservation forest, protection forest, sacred forests, and the public land that include land for school, temple, and cemetery. The largest portion of land is protection forest that covers an area of 730 ha, while production and conservation cover relatively small with the areas of 56 ha and 7 ha respectively. Typically for many villages in Savannakhet province, Ban Tat Hai also has a sacred forest of 2 ha.

Several families from Ban Tat Hai cultivate paddy land in other villages, but so far there have been no land use conflicts among villagers or with their neighbouring villages. As the village is located near and along Xe Bang Hieng, villagers also made agreement with their neighbouring villages to ban fishing with explosives and guns in order to protect fish resources.

Rules and regulation to manage forest are based on the forest laws and regulation that villagers adopted and modified as appropriated to their conditions. Villagers share equal access rights to forest resources as well as the right to protect them.

Villagers expressed their interests to register production forest as the communal land as they foresee the benefit that registration would provide them with secured rights and decision making to manage their declining forest resource. As part of the ongoing development processes, villagers also learnt that there are many more stakeholders interested in their land and forest resources and if they would have not protected and claimed the management rights now, it might be too late to claim them later.

Ban Tang Alai, Phine District, Savannakhet Province

Ban Tang Alai is named after the clan that established the village about 100 years ago. Originally, two families settled in the area to raise livestock. Today, Ban Tang Alai has over 450 inhabitants. Besides a number of smaller clans, the Tang Alai and the Lavang clan form the majority. The village administration is mostly made up of members of the Tang Alai clan. The current village head is already in his third term.

All villagers in Ban Tang Alai belong to the Katang ethnic group. With almost 120,000 members, the Katang make up the seventh largest ethnic group in the LAO PDR (Lao Population Census 2005). The Katang belong to the Mon-Khmer language group and live in the plains of Southern Laos, including the provinces of Savannakhet, Saravane, Sekong and Champassak (Lao National Front 2005:59).

Due to its remote location, there has been no land use planning and allocation in Ban Tang Alai. The village has only recently received road access and villagers can now reach the district centre in Muang Phine in little over one hour. Besides all the positive aspects, villagers in Tang Alai are concerned about potential negative impacts that improved accessibility might have on the village's natural resources.

The majority of the people in Ban Tang Alai are subsistence farmers. Every household grows rice in rainfed paddy fields. Other main economic activities include livestock raising, vegetable farming and collecting of NTFPs. Two streams demarcate the boundaries of Tang Alai village. The boundary to the east with Ban Houaloung has been mutually agreed upon in the 1980ies. Several families from Tang Alai use land for paddy cultivation outside the village territory. So far there have been no conflicts with any of the neighbouring Katang villages over the use of land and forests. All neighbouring villages have furthermore agreed to ban fishing with explosives and guns in order to protect declining fish resources.

Within the village territory, people from Ban Tang Alai use the forest to collect vegetable, bamboo and firewood, as well as to harvest timber for house construction. Cutting timber for sale is prohibited. Outsiders need permission from the village committee in order to cut trees. Forest areas are considered as the responsibility of the entire community. All villagers enjoy equal access rights and there are no restrictions on the use of NTFPs. Forest areas include production and protection forests. Apart from individually claimed plots for paddy and vegetable cultivation as well as housing, all land within Ban Tang Alai territory is considered as communal land.

A large part of the forest in Ban Tang Alai is protected by the villagers due to its spiritual significance. No trees can be cut in the sacred spirit forest area and violators are fined pigs or cattle. Customary rules are enforced by the village committee, the elder group and the "Sanadi". The Sanadi is a guardian of traditional law. In the past, all cutting of trees had to be approved by the Sanadi. The rule was relaxed in the 1980ies but villagers in Ban Tang Alai can still be punished for wasteful use of timber resources.

Villagers in Ban Tang Alai have noticed a decline in forest resources. The village administration believes that zoning and allocation of land in Ban Tang Alai could help to better monitor the use of remaining resources. Worried that the new road access could attract outsiders who are interested in the commercial exploitation of timber, the administration also hopes that land registration could provide land and resource tenure security for Ban Tang Alai. Once the rights of the people in Ban Tang Alai to their land and forests are recognized by the State, villagers felt confident that they could manage and protect their natural resources. After the titling of individual land holdings, the registration of forest land in the name of the village was therefore perceived as a main priority.

Ban Nathong, Phine District, Savannakhet Province

Ban Nathong is named after the clan that established the village. There are seven clans in the village but the Nathong clan still forms the majority. Some families have moved out to live closer to National Road No. 9 but generally the population has been stable in recent years. There are almost 1300 people or 170 households living in the village. They share an area of 13,830 hectares of which 40 percent are national production and conservation forest.

People in Ban Nathong belong to the Makong ethnic group. There are more than 117,000 people of the Makong ethnicity in the Lao PDR. Together with the Katang, they form the seventh largest group in the country. The majority of families in Ban Nathong cultivates rice in wet and dry rice fields. Most households generate cash income by selling small and large livestock. Some engage in wage labour, mainly sawing of timber and transplanting of rice.

Ban Nathong used to be one of the villages under the Forest Management and Conservation Programme (FOMACOP). Since the project closed down in 2000, villagers have continued to protect the national production and conservation forest against outside encroachment. The village committee reported that they are successful in stopping legal activities of local people but are helpless when confronted with powerful and well-connected individuals.

While still part of FOMACOP, the village generated money from timber sales that was invested in a road access and several wells in the village. Nowadays, villagers in Ban Nathong have little choice but to accept the annual quota that the district approves for logging operations in the village use forest. This year the quota was 500 m³ and villagers estimate that they might be able to provide a maximum of 200 m³ next year. They expressed their hope that a new project would help them to secure their rights to the forest land and strengthen their position in negotiations with district officials and logging companies. At the moment, the community benefits little from the logging operations, except for individual who works for the logging operator to find and mark the tree for cutting.

Ban Nathong conducted LUP/LA in 1998. According to the villagers, all forest lands are held communally. In addition, reserve agricultural land and cemeteries are also considered as communal lands. Ban Nathong has a number of administrative organs to manage lands and natural resources, including the village committee, village land allocation committee, and elder group.

In response to questions related to land registration, villagers were mainly concerned about possible tax payments for communal land. However, they preferred registration of all communal lands in the name of the village, even if they had to pay tax. On the other hand, villagers did not seem too concerned if the state would claim ownership over forest lands – apart from the spirit forest. There was a general feeling of powerlessness vis-à-vis decisions by the government.

National protection and conservation forests should be registered in the name of the state. Villagers did not feel confident to manage those areas by themselves.

First priority for registration is the grazing area or village regeneration forest in order to exclude outsiders from using the area. This is of great importance to the villagers since a) military officials have approached the villagers asking to use the forest and b) villagers have agreed to plant 5,000 ha rubber in Nathong sub-district. The quota for Nathong sub-district is part of the target to allocate 30,000 ha for rubber cultivation by a Vietnamese company in Muang Phine. The area within Ban Nathong territory has not yet been surveyed, so villagers do not know the exact size of the future rubber plantation. However, they are worried it might affect the village grazing area.

Ban Nonyang, Phine District, Savannakhet Province

The village was named following the name of remnant of Dipterocarp trees growth in the areas and nearby the village location. The village was established in 1931 by 3 Phouthai families who settled in the area to develop paddy fields. Today, Ban Nonyang has 152 households with 1003 inhabitants.

The majority ethnic group in Ban Nonyang is Phouthai that accounted for 92 percent of total population, and other ethnic group is Katang that represented 8 percent of population. Phouthai consist of more than 180.000 members and make up the fifth largest ethnic group in Lao PDR (Lao population Census 2005). Phouthai belong to the Lao-Tai language group and live in the central part of Laos.

The majority of the people in Ban Nonyang are subsistence farmers. Every household grows rice in rainfed paddy fields. Ninety percent of households in the village cultivate paddy on land that was bought from neighbouring villages. Twelve households from outside have paddy land in the Ban Nongyang. Other main livelihood activities are livestock raising, vegetable growing, alcohol brewing, and collecting of NTFPs. Main income of the village is from selling rice, livestock, vegetables and alcohol.

Without formal LUP/LA, villagers classified forest land into production, conservation, sacred forest. Their production forest is about 200 ha the largest portion of land use type in the village which second by paddy land of 190 ha. Village also adopted forest management regulation in which in the production forest village can collect vegetable, bamboo and firewood, as well as to harvest timber for house construction. Cutting timber for sale is prohibited. Timber cutting required permission from village committee. All members of the village share responsibility in managing and protecting forest areas. All villagers enjoy equal access rights and there are no restrictions on the use of NTFPs. For sacred forest, traditional rules were strictly applied due to its spiritual significance. No trees can be cut in the sacred spirit forest area and violators are fined with the sacrifice of pigs or cattle to the forest and entire village. Customary rules are enforced by the village committee and the elder group. So far, there were no reports on people breaking the rules.

Previously, village had conflict of interest with neighbouring villages over the land leased to logging company to use land as log yard. However, the conflict was solved in 2004.

Ban Thongnamee, Pakkading District, Bolikhamxay Province

Ban Thongnamee Nuea was established in 1996. At first the area was called Thong Na Phii (face of spirit) and nobody was supposed to live in this area. The first group of 19 families from Ban Nongboua, which is located 3 km from this area, moved in and settled as well as changed the name of the village to Thongnamee (Thong Na Mee). With the flux of new settlers, especially the Hmong refugees who left the country during 1980s and returned from refugee camps in Thailand, this has contributed to the building of a larger village. In 2003 the village was divided into two villages by dividing the sister villages of north and south. Today, Ban Thongnamee Nuea (north) has 515 households with 3,667 inhabitants and its territory covers an area of 6,000 ha. Main ethnic groups are comprised of Hmong, Lao, Thai Dam, and Khammu, with the population of 3374, 159, 117, and 7 people respectively. The current chief of the village is Hmong and serving his second term.

The village is located along the national road No. 13 south. As communities are relatively big and partly under the UNHCR support program, the village gets support from international development organizations for the construction of market place, water supply system, school, and irrigation system as well as a paddy development fund. As infrastructure of the village developed, it also attracted those from other areas to move in and settle in the village. It was reported that, in 2003, more than 100 families moved in and settled in the village and new applicants for 2006 are 66 families. Unauthorized resettlement is a big concern for villagers and its administration, especially to allocate land to the new comers. As most of the agricultural land had already been allocated to individual households during the land allocation conducted in 2003, the new comers have no other alternative but breaking the land use regulation by encroaching the village's forest reserve areas.

The majority in the village are self-subsistence farmers. Villagers are mainly engaged in agriculture, some can cultivate paddy in two seasons as the irrigation system is available. Other main livelihood support activities include: livestock raising, vegetable growing, and NTFPs collection. Cross-village land use especially paddy is a common practice between Thongnamee Nuea and Thongnamee Tai.

As a result of LUP/LA, villagers have reserved some areas as village or communal land such as: conservation, production forest, reserved land for market, and settlement. Due to the abrupt influx of new comers that led to a high demand on land especially for agriculture, some portion of production forest has been transformed and converted to agricultural land and some of conservation area has been reclassified and changed to production forest.

Villagers did not report any land use conflict among the villagers and between villages, but they noted that their production forest has been degraded as rules in forest management were ignored as everyone shared and enjoyed equal rights in accessing and collecting NTFPs, bamboo, firewood from the reserved forest. Currently villagers have to buy timber from outside for house construction.

Another concern is the big wave of immigrants into the village. Villagers expressed interest in registering communal land, in which they believe the communal registration and titling would provide secured authority and decision making power to exclude and monitor the use of land especially production and conservation forest. However, the remaining question to this case is how village authority will become an effective organization in allocating and monitoring communal land with the high pressure of population growth and high demand of productive land from both outsiders and villagers.

Ban Namdua, Pakkading District, Bolikhamxay Province

Ban Namdua is named after the river 'Namdua' and was established in 1966 by 27 families who migrated from Ban Hat. The reason for the resettlement of this village was the heavy flooding that occurred in 1966, causing rice shortage. Due to a number of immigration waves in the late 1960s and mid 1990s, the number of households in the village was quickly increasing. In 2005, another 261 families joined and in 2006, 300 families arrived in Ban Namdua causing the total population to rise to 1,783 people.

There are 14 ethnic groups living in Namdua village and people practice four different religions (Buddhism, Catholic, Christian, and Animism). The majority are Lao Loum and Khammu.

Namdua village is located along the Road No. 13 South, and the Houylerk stream flows along the side of the village. A major part of the village territory is adjacent to land concessions for tree plantation such as Peter Coconut Tree Plantation and Oji Eucalyptus plantation with a large-scale plywood factory. People received access to electricity in November 2006 with the financial support of Lao World, Oji, and some village contribution. In 2002, two deep-wells were built and the number has been increased to 10 in 2004.

One third of the families in Ban Namdua own paddy fields, while the other two thirds engage in shifting cultivation as the major part of the villagers are new immigrants. Fields for shifting are opened in the area of Peter Coconut Plantation and Oji Eucalyptus Plantation, but only during the first year after clearing the land. There are three grazing zones in the village, but all of them have been granted for concession to individuals from Ban Pakkading. Thus, villagers can not use those grazing areas for raising their animals, so they have to use the grazing area of Namdua village where there are 25 families sharing the area for animal raising under the management of the Livestock Committee. Each year, every member has to pay the maintenance fee for repairing the fence surrounding the grazing area. In addition to the cultivation of paddy rice, shifting cultivation and livestock, people in Namdua village also grow other crops such as: vegetables, cucumber, and raising small livestock for their own consumption and for sale.

Before the existence of the concession for coconut tree plantation and eucalyptus plantation, there was plenty of land available for people to do agricultural production as well as the large area for collecting NTFPs, such as raisins, and wild life. However, after the concession the forest area is limited and currently people from 3 villages have to share the use of 20 hectares of forest area. Thus, tree cutting for building houses must be under the agreement and authorization of the Naiban from 3 villages, with the stamp of 3 villages. The Naiban has the right to grant only 5 m³ for each family, but with the condition that the requester has no house at that time. Fines for the act of forest encroachment are under the responsibility of DAFEO.

Land in the village are categorized as follows: use forest, grazing area, conservation forest, paddy field, agricultural land, school, temple, duck pond, reserved land for house construction. There is a sketch map for the delineation of each type of land. However, so far the major part of the forest land has been covered by the concession project and people in the village expressed their hopes that the district would consider allowing the villagers to raise their animals in the 3 grazing areas located within the village territory. Even the 3 grazing areas have been granted concession to people from other villages but the number of animals raised there are just a few. Furthermore, villagers also need more agricultural land as it is not sufficient for the growing number of people in the village.

Ban Houylerk, Thaphabath District, Bolikhamxay Province

The name of Ban Houylerk originated from the Houylerk River. In 1982, this area was initially established under the management of the Forestry State Enterprise No. 3. After the dissolution of the State Enterprise in 1986, the land was allocated to the staff of the State Enterprise which at that time consisted of 187 families. The name of that production area has been changed to Houylerk village. People build houses along the river and the road with a total area of 1,115 hectares. In 2005 the total population of the village was 1104 persons (536 females). There were 212 households that consisted of 218 families.

People in Houylerk village consisted of different ethnic groups as follows: Lao Loum (1031 people), Phouan (32 people), Khammu (28 people), Phouthai (13 people). All ethnic groups are Buddhist. Most of the villagers have migrated from Xiengkhuang and Samneua, with only a few of them from Vientiane and other provinces. Since the majority of the population in the village are the former staff of the Forestry State Enterprise No.3 and war veterans, it is very convenient for village management tasks. In 2005, the village was awarded a Village Party Unit for strong and comprehensive leadership.

Houylerk village is located 5 km from Road No. 13 South. The un-asphalted village access road was built by the Forestry State Enterprise No. 3 in 1981-1982, and was improved in 1993 by the Drug Control Programme and by Nam-Lerk Hydropower Project in 1997. Access to electricity from Nam-Lerk hydropower and water supply started in 2004. The village consisted of a primary school and a higher secondary school, which can accommodate students from 3 nearby villages and a health post and village office.

The geographical landscape of the village is mountainous and raising livestock is the main occupation of the villagers. In 1996, HIPER Project gave 12 breeding cows to 4 families (3 per family), then 2 more cows to 1 family in 1997, and 8 cows to 3 families in 1999, totalling 23 breeding cows. After 5 years of raising cows the 11 families must return the breed cows and half of the calves to the Livestock Committee to give to other needy families. Poor families will be a priority. So far, the total number of cows has been expanded to 116 heads in 29 families. In addition to the cows, villagers also raise goats, fish, buffalo and other fowls to make additional family income. Ban Houylerk is located 5 km away from the market.

The village has regulations from forestry management as follows: Forest plantation is under the direct management of the district and villagers are banned from cutting trees in that area. In the past, there were individual encroachments in the area by some people in order to do rubber plantation but the district was able to reclaim the land. Domestic animals are allowed to enter the plantation forest. At the present, most of the village use in the forest has been individually occupied while the conservation forest is still safely preserved in its green condition without any encroachment.

Land in the village was categorized as follows: village use forest, sacred forest, grazing area, conservation forest, protection forest, forest plantation, rehabilitation forest, paddy field, reserved land for agriculture, school, health station, fish-pond, reserved state land for construction, reserved land for house construction. In addition, the village has also created the map of the delineation of each land category. Villagers use natural resources from other villages by collecting raisin and other non-timber forest products.

People expect to have the registration of each type of land in order to facilitate their agricultural production activities. They also would like to request that the government allocate the forest plantation to village people for agriculture use since the production land currently available is not sufficient with the needs of the villagers.

Ban Somsaard, Thaphabath District, Bolikhamxay Province

Ban Somsaard is located on top of the hill, so that the village is safe from flooding. The name of the village was assigned by the district authority when the village was established in 1957. Originally, 20 families of Meuy ethnic group from Khamkeut district of Khammouane province moved and settled in the area as they considered that the area was flat and easy to get access because it is located along the National Road No. 13 South. In 1997, the Lao group from Sayaboury province moved in and became members of Ban Somsaard. Presently, the village has 80 households with 389 inhabitants. There are two main ethnic groups, Meuy and Lao, living in the village. Meuy accounted for 70 percent of total population.

The majority of the people in Ban Somsaard are subsistence farmers. Almost all households have paddy fields. In addition, villagers are also engaged in livestock raising, vegetable farming, collecting of NTFPs, and making rice baskets for sale. All households involved in rice basket making and this activity is a main source of income for households and the village. Some households can earn 200,000 to 300,000 kip per week. Although not every household produces enough rice for their consumption, villagers reported that income generated from rice basket making could support the household to buy enough rice for their consumption.

The village is located in a peri-urban area where most of basic infrastructures such as road, electricity, school and healthcare are available. In addition, the village also receives support from development projects for well construction, revolving fund for household activities. LUP/LA was conducted with the technical support from the Agriculture and Forestry Office of Thaphabath district in 1999. As a result, villagers have an agreement on their village boundary with their neighbours and with Phoukhaokhouay National Park. Apart from the individual claimed land of agriculture and settlement areas, the villagers classified land to serve for public infrastructure, livelihoods supports, and environment protection. Public and communal land in the village include reserved land for settlement, school and temple, agricultural land, production forest, conservation forest, and protection forest.

District economic development policy is to attract investors in agriculture and forestry activities. District officials negotiated with villagers to allocate their reserved land for settlement for a company to establish the wildlife capture and breeding areas in the village, so that their 8 ha of reserved settlement areas was allocated to the company. In 2006, the village, with the request from the district, allocated 160 ha of their reserved agricultural land to a private company who proposed to establish the castor oil plantation and oil refinery for bio-diesel in the village. In addition, some households in the village who have accumulated capital also claimed and developed rubber plantation in the agricultural reserved areas.

Through this trend of land use change, village administration raised the concerns over the benefit from allocating land to outsiders, since the benefits are not transparent to all villagers. As the wildlife capture and breeding company failed to employ villagers as they promised in the beginning. The villagers also suspect on the castor oil plantation project with the question if the project was just to grab land from the village. Furthermore, the expansion of plantation in reserved areas also affects the bamboo resource as the main material for rice basket making as the main and significant source of income for villagers. Competition on land and resources among villagers and between villagers and outsiders has increased and is expected for conflicts to occur more often in the near future.

As their production forest of a young growth and logged over area are not able to provide timber for house construction, villagers perceived that they have to cross the village boundary to cut timber from the National Park. This activity might be considered as illegal, but villagers give the reason that they traditionally have used the forest that is now demarcated as National Park and the forest areas that they enjoy rights to are now the fallow land and crop areas which are of productive value for villagers.

Appendix VI: Roles and Duties of Relevant Authorities

There are several key government ministries/agencies that are involved with issues that surround the concept of communal titling, along with the local administrative units at the provincial, district and village levels. The following chart outlines the roles and duties of the various authorities.

Government Entity	Responsibility
National Land Management Agency (NLMA)	<p>Responsible for the drafting of policies, strategic plans and legislation in relation to land management and development in the country. The NLMA is essentially responsible for taking the lead role in land classification and land use planning activities mandated by the Land Law in coordination with other government entities from the local to the central level. At the local level, provincial land authorities, district land authorities and village land units are to be established throughout the country. The provincial authority is in charge of registration and issuing titles or land survey certificates, district in charge of conducting surveys and putting together necessary documentation for registration, and village units in charge of gathering data/evidence for the land file and assisting with conflict resolution at the grassroots level.</p> <p>NLMA is also primarily responsible for managing construction land throughout the country throughout the country, including issuing regulations on the management, protection, development and use of this land.</p> <p>Any drafted legislative changes or regulations relating to the registration, titling and management of communal land property rights would come from the NLMA, in coordination with other relevant sector entities.</p>
Ministry of Agriculture and Forestry	<p>Primary responsibility over management of forest, agricultural and water lands, including drafting and enforcement of legislation and regulations related to these lands. Primarily responsible, in coordination with other sector entities, for categorizing different agriculture and forest land types at national, provincial, district and village levels. Hierarchy of provincial and district level Agriculture and Forestry Offices, with oversight over Village Forest Management Units for planning and management of local forest resources. Also responsible for forest land allocation of degraded forest lands, in coordination with NLMA at provincial and district level, to individuals and organizations.</p>
Ministry of Information and Culture	<p>Responsible for managing the cultural land throughout the country, including issuing regulations on the management, protection, development and use of this land.</p>
Ministry of Industry and Handicraft	<p>Responsible for managing industrial land throughout the country, including issuing regulations on the management, protection, development and use of this land.</p>
Ministry of Communication, Transport, Post and Construction	<p>Responsible for managing communication land throughout the country, including issuing regulations on the management, protection, development and use of this land.</p>
Ministry of National Defence and Ministry of Public Security	<p>Responsible for managing the national defence and security land throughout the country throughout the country, including issuing regulations on the management, protection, development and use of this land.</p>

Local Administration (province, district, village)	The Local Administration Law spells out very broad mandates for the various levels of local administration, without providing much in the way of detail on what exactly the various levels do in relation to one another, except that the province supervises the district, and the district supervises the village. The three levels do have administrative decision making and regulatory authority where it has not been superseded by or conflicts with other rules and regulations. In addition, it should be pointed out that the village is the basic level for revenue (tax) collection, and that the village chief is responsible for conflict resolution among the people within the village. More detail tends to exist in legislation on the various line ministries and ministry-equivalent organizations, which have local offices or representatives at the provincial, district and sometimes village level.
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Appendix VII: List of Rules and Regulations Reviewed

TYPE AND NUMBER	YEAR	ISSUING BODY
Constitution	2003	National Assembly
Civil Procedure Law	1990	National Assembly
Property Law	1990	National Assembly
Forestry Law	1996	National Assembly
Agriculture Law	1998	National Assembly
State Property Law	2002	National Assembly
Law on People's Court	2003	National Assembly
Land Law	2003	National Assembly
Local Administration Law	2003	National Assembly
PM Decree 59 Sustainable Management of Production Forest Areas	2002	Prime Minister
PM Decree 67 Establishment of National Land Management Agency	2004	Prime Minister
PM Decree 192 Compensation and Resettlement caused by Development Project	2005	Prime Minister
PM Decree 101 Implementation of the Law on Land	2005	Prime Minister
PM Decree ???? State Land Leasing and Concession	2005	Prime Minister
PM Instruction 03 Instructions for Expansion of Land Management and Land & Forest Allocation	1996	Minister of MAF
PM Instruction 1 Province as Strategic Unit, District for Budget Planning and Village as Implementation Unit	2000	Prime Minister
MoF Regulations 996, 997 & 998 Land Parcel Registration, Systematic Adjudication of Land Use Right and Sporadic Adjudication of Land Use Right	1998	Minister of MoF
MAF Regulation 535 Management of Village Forests	2001	Minister of MAF
MAF Regulation 204 Establishment and Sustainable Management of Production Forests	2003	Minister MAF
MAF Decision 54 Customary Rights and Use of Forest Resources	7 March 1996	Minister of MAF
MAF Instruction 377 Customary Use of Forest Resources	17 April 1996	Minister of MAF
MAF Instruction 822 Forest Land Allocation for Management and Use	2 August 1996	Minister of MAF